

Deposition of Chistina Morrison, taken April 11, 2014

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

VICTORIA D. JOHNSON,)
)
)
Plaintiff,)
)
vs.) Case No.
) 1:13-cv-2012
)
UNIVERSITY HOSPITALS)
HEALTH SYSTEM, INC. and)
UNIVERSITY HOSPITALS)
PHYSICIAN SERVICES,)
)
Defendants.)

- - - - -

THE DEPOSITION OF CHRISTINA MORRISON

FRIDAY, APRIL 11, 2014

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The deposition of CHRISTINA MORRISON, called by the Plaintiff for examination pursuant to the Federal Rules of Civil Procedure, taken before me, the undersigned, Gretchen E. Windenburg, a Court Reporter and Notary Public within and for the State of Ohio, taken at the offices of Giffen & Kaminski, LLC, Suite 1600, 1300 East Ninth Street, Cleveland, Ohio, commencing at 10:43 a.m., the day and date above set forth.

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1 CHRISTINA MORRISON
2 of lawful age, called by the Plaintiff for
3 examination pursuant to the Federal Rules of
4 Civil Procedure, having been first duly sworn, as
5 hereinafter certified, was examined and testified
6 as follows:

7 EXAMINATION OF CHRISTINA MORRISON
8 BY MR. HERRON:

9 Q Can I have you state your name, for the
10 record, and spell it, please.

11 A Full name is Christina, C-H-R-I-S-T-I-N-A,
12 Morrison, M-O-R-R-I-S-O-N.

13 Q Have you ever given a deposition before?

14 A No.

15 Q My name is Mark Herron. I represent Victoria
16 Johnson in a lawsuit that she has pending
17 against University Hospitals Physician
18 Services, which we will just refer to as
19 University Hospitals.

20 A Okay.

21 Q I am going to be asking you some questions
22 regarding your involvement and events that
23 led up to this lawsuit. A couple of ground
24 rules that you need to follow to make this go
25 relatively smoothly. The first, most

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1 important rule is when I'm asking my
2 question, wait for me to finish asking before
3 you start giving your answer. Okay?

4 A Okay.

5 Q We are going to drive Gretchen crazy if we
6 start talking over each other. And likewise,
7 I will try to let you finish giving your
8 answer before I start attacking you and
9 moving on to something else. Fair enough?

10 A Fair enough.

11 Q So that our court reporter, Gretchen, can
12 take down your testimony today accurately,
13 it's very important that you give verbal
14 responses; nods, gestures, uh-huhs, uh-uhs
15 don't come out accurately in a transcribed
16 record. I guarantee you will do it at least
17 twice, because everybody else does it, but
18 make sure to give verbal responses so we have
19 an accurate record of what you're saying.

20 Okay?

21 A Okay.

22 Q The third rule that you need to follow is, if
23 my question doesn't make sense, something
24 doesn't seem clear to you, and you're not
25 quite sure what it is I'm talking about,

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1 please speak up and let me know so that I can
2 either rephrase the question or ask you
3 something differently. Okay?

4 A Okay.

5 Q We are going to assume for the purposes of
6 the record that if you don't speak up and ask
7 for any type of clarification, that you've
8 understood the question in the manner that I
9 have intended it. Fair enough?

10 A Yes.

11 MR. BULEA: I just want to
12 say the way that -- I mean, to the extent
13 that she knows she's misunderstood a
14 question, she'll certainly say that. I don't
15 think she can agree on the assumption that
16 you're making that if she doesn't know that
17 she's misunderstood a question, then she
18 can't really say that she's misunderstood it.

19 MR. HERRON: I have
20 absolutely no idea what you're saying, Don,
21 but thank you for making the objection for
22 the record.

23 MR. BULEA: I'm making an
24 objection and saying -- you can assume
25 whatever you are going to assume. The way it

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1 was worded, though, we can't agree that
2 simply because she doesn't say anything means
3 that she's fully heard and understood the
4 question. Of course, she'll do her best to
5 the extent she understands. The fact that
6 she has misunderstood a question, she'll let
7 you know.

11 Q If you don't understand something, you'll
12 speak up and let me know?

13 A I will, yes.

14 Q I'm not going to presume anything with this
15 next question, but are you under the
16 influence of any medication, drugs, alcohol,
17 or anything else that will impact your
18 ability to testify truthfully today and
19 recollect events that occurred almost two
20 years ago?

21 A No.

22 Q What have you done, other than meeting -- I
23 assume -- with the hospital's attorneys, to
24 prepare yourself to testify today?

25 A I left the hospital for another position back

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1 in December, so nothing. I have no access to
2 anything.

3 Q Did you review any documents in preparation
4 for testifying here this morning?

5 A I don't -- I don't have any documents to
6 review.

7 Q Well, that doesn't mean somebody didn't give
8 you documents to review. Did anybody give
9 you documents to review, e-mails, policies
10 and procedures, anything having to do with
11 Victoria Johnson?

12 A No e-mails, no policies, nothing.

13 Q Did you review any notes that you took
14 regarding anything having to do with Victoria
15 Johnson to prepare yourself to testify today?

16 A I mean, again, I left the hospital, so I
17 don't have any of my notes to review.

18 Q So nobody has given you anything to review in
19 terms of e-mails, documents? Nobody gave you
20 any type of document to review to prepare
21 yourself to testify this morning?

22 A Nobody has given me anything, no.

23 Q When would be the last time then that you
24 would have looked at anything having to do
25 with Victoria Johnson?

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1 A It would have been prior to my -- I left the
2 hospital in the middle of December of 2013,
3 so since then, I wouldn't have had access to
4 anything.

5 Q Well, before then?

6 A Well, before then, I would have had access,
7 but I couldn't tell you the exact date I
8 would have looked at them.

9 Q Did you look at any documents, e-mails,
10 notes, anything pertaining to Victoria
11 Johnson between the time she was terminated
12 and the time you left University Hospitals?

13 A I mean, I would have gathered the stuff
14 together, yeah. So there's probably
15 opportunity that I would have looked at it
16 then for sure.

17 Q Do you recall when that was?

18 A It would have -- I mean, if I -- so prior to
19 my leaving in December, I'm thinking if I
20 left mid December, it probably would have
21 been early December that I would have, you
22 know, made sure that I had all the
23 information together, if anything came of the
24 situation.

25 Q You have known that this lawsuit has been

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1 pending for a while; is that correct?

2 A I mean, I guess.

3 Q Well, don't guess. Either you have known
4 about it or this deposition is the first time
5 you have known about it.

6 A Yes, I knew that there was something pending.

7 MR. BULEA: And I just
8 want to instruct her. He's not asking you to
9 guess. He wants you to give truthful
10 testimony, so don't guess.

11 THE WITNESS: Yeah.

12 Q Well, since you've indicated that you left UH
13 back in December of 2013, where are you
14 currently employed?

15 A I work for Steris Corporation in Mentor.

16 Q Steris or Stairs?

17 A Steris, S-T-E-R-I-S.

18 Q Where in Mentor are they located?

19 A They're on Heisley Road.

20 Q On what?

21 A Heisley Road. H-E-I-S-L-E-Y.

22 Q What is your position with Steris Corp.?

23 A Human resources manager.

24 Q And you've had that position for, I guess,
25 five months now?

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1 A I started there December 31, 2013.

2 Q Prior to Steris Corporation, you were
3 employed at University Hospitals, correct?

4 A Yes.

5 Q You were employed specifically by University
6 Hospitals Physician Services, correct?

7 A I was.

8 Q How long were you at University Hospitals
9 Physician Services?

10 A Let's see. I started with the Physician
11 Services group in May of -- hang on. I'm
12 trying to get the exact date. The exact year
13 would have been, I think, 2012. Hang on.
14 Let me think. So I started with University
15 Hospitals -- no, I take that back. So it
16 would have been May of 2010 that I started
17 with the Physician Services group.

18 Q And you started with another unit in
19 University Hospitals back in 2008?

20 A Yes.

21 Q What unit was that?

22 A I started with Geauga Hospitals -- Geauga
23 Hospital, which is one of their community
24 hospitals.

25 Q What was your position with UHPS?

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1 A Senior human resources generalist.

2 Q What was your position at Geauga Hospital?

3 A Human resources generalist.

4 Q As a senior human resources generalist at
5 UHPS, to whom did you report?

6 A Angelique Sunagel.

7 Q I know her first name. What's her last name?

8 A S-U-N-A-G-E-L.

9 Q What was Ms. Sunagel's title?

10 A Director of human resources.

11 Q Was Ms. Sunagel director of human resources
12 for just the UHPS unit?

13 A Yes.

14 Q To whom did Ms. Sunagel report, if you know?

15 A She reports to Jason Elliott, who is the vice
16 president of human resources.

17 Q Is Mr. Elliott vice president of human
18 resources for just UHPS or --

19 A He also has the community hospitals, so he
20 has a section of UH. So he has the Physician
21 Services group and the community hospitals.

22 Q At UHPS, what were your duties as a senior
23 human resource generalist?

24 A Employee relations, physician relations.

25 Just the HR liaison for any HR strategies,

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1 training and development, performance
2 management.

3 Q Do you have any responsibilities for
4 administering the Family Medical Leave Act
5 for employees of UHPS?

6 A No.

7 Q Who did?

8 A There is a separate department that
9 facilitates that.

10 Q What is that department called?

11 A There's corporate health.

12 Q Who is the individual that heads that
13 department -- well, let me back up.

14 Who is the individual that headed that
15 department back in June, July, August of
16 2012?

17 A Do you mean the person that's like the
18 director over that group?

19 Q Okay.

20 A Because we had a representative that handled
21 all of our FMLA.

22 Q Who was that person.

23 A That's Kara Ladaika.

24 Q Kara?

25 A Kara, with a K, Ladaika, L-A-D-A-I-K-A. And

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1 then she reports to Ron Todaro, who is the
2 director. Last name is T-O-D-A-R-O.

3 Q Other than the duties that you've just
4 listed, did you have any other duties as the
5 senior human resources generalist at UHPS?

6 A Just a lot of various general HR things. I
7 mean -- as far as -- like how specific do you
8 want me to get?

9 Q As specific as you can.

10 A Just I was the HR liaison for all of the
11 leaders and employees in the Rockwell
12 building, as well as the physician groups
13 spread across Northeast Ohio. There's
14 physician practice groups in 11 counties, so
15 I was their HR representative. So any
16 HR-related issue, I was kind of that, you
17 know -- the person they would contact. So if
18 it was wage stuff, benefits. You know, I
19 wasn't a benefits person, but I was their
20 first contact to get the information. If
21 that helps.

22 Q What, if any, function did you have while
23 senior HR generalist at UHPS with respect to
24 University Hospitals employee assistance
25 program?

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1 A So the employee assistance program is -- I
2 mean, I would consider them a business
3 partner. So it is a program that's there to
4 help assist employees, any employee within
5 the system, from the president down. If
6 there are any matters that -- it's considered
7 a benefit and it's a counseling, it's -- you
8 know, if employees are having professional
9 issues and personal issues, it's a resource
10 that we have that we partner with to help
11 assist the employees. So I don't work for
12 them. They fall under the realm of HR, but
13 they're their own department. So my
14 relationship with them would have been to
15 partner with them to help, you know, guide
16 employees there if they need assistance.

17 Q Well, how does somebody go about getting
18 referred to the -- or being referred to the
19 employee assistance program for whatever
20 problem he or she may be having?

21 A Okay. It can go many different ways.
22 Employees can contact them directly with no
23 referral. There is also our referral that's
24 a -- would be considered not mandatory, where
25 maybe the manager is noticing that the

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1 employee is struggling with personal issues
2 or work issues or in the -- you know, we
3 would help them. Maybe it wouldn't be
4 mandatory, but we might advise that the
5 employee contact them, because they're there
6 as a help to them.

7 Then there's also what would be
8 considered a mandatory referral, which would
9 be -- there's criteria around that. And if
10 it were a mandatory referral, the human
11 resource person partners with the manager of
12 employee assistance to make that
13 determination on whether -- just depending on
14 the situation, you know, whatever is going
15 on, to make that determination -- because
16 they're the experts, you know, they're
17 certified counselors -- to determine whether
18 to refer that person or not.

19 Q You used the term in describing the mandatory
20 referrals of criteria around that. What did
21 you mean when you said criteria around that?
22 Define that phrase.

23 A Well, yeah. So I can't speak to whether it's
24 written criteria, but the manager of the
25 employee assistance, she's the -- she's the

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1 expert. I'm not the expert. So she would
2 talk with us, talk with the manager,
3 sometimes talk with the employee to find
4 out -- see how things are. And we have kind
5 of guidelines around -- you know, we're not
6 going to refer everybody; it's going to be
7 certain situations where we would mandatory
8 or voluntarily or suggest that the employee
9 go see.

10 Q Well, what are the situations where it would
11 be mandatory?

12 A It varies.

13 Q Well, you said there are situations where you
14 would make a mandatory referral. I'm asking
15 what those situations are.

16 A There's two tiers. There's a tier one and a
17 tier two, and that's per policy.

18 Q Define what tier one is and then define what
19 tier two is, please.

20 A Well, without having the policy in front of
21 me, I can't read exactly what the policy
22 says. But tier one would be, if I recall --
23 I hope I'm not flip-flopping them; it's been
24 a while -- you know, if there's decline in
25 performance, situations in the workplace

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1 where the employee is -- suddenly there's a
2 change, whether it be a personality change,
3 observable things where we would have a sense
4 that there might be something going on in the
5 employee's world that might want us to refer
6 them; arguing suddenly, those types of
7 things, distractive or defiant behavior.
8 Those types of things.

9 Then the higher tier would be there's
10 a suspicion that they might be under the
11 influence, threatening to take their life,
12 more serious things. And, again, without
13 having the policy in front of me, I don't
14 remember the exact verbiage.

15 Q And tier two is the more serious one, right?

16 A I believe so. Again, without having the
17 policy, I don't want to say. I could be
18 flip-flopping them.

19 Q Well, we are going to come back to the EAP
20 policies and those things in a minute, and I
21 actually got a little off track.

22 Are there any other duties that you
23 had, as the senior HR generalist at UHPS,
24 that you have not discussed? Have we covered
25 everything?

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1 A You want to read what I said? Remind me what
2 I told you, in case I missed something.

3 Q You're asking a lot here, for me to read my
4 own scribble. Employee relations, physician
5 relations. No FMLA responsibilities?

6 A I did not.

7 Q I mean, you remember your testimony because
8 you just gave it. Is there anything else
9 that you recall being a part of your job that
10 you didn't list?

11 A Nothing major.

12 Q Did your job duties ever change between
13 May 2010 when you started at UHPS and when
14 you left in December of 2013, or were they
15 pretty much the same throughout that period?

16 A Pretty much the same throughout that period.

17 Q Prior to starting at Geauga Hospital in 2008,
18 where were you employed?

19 A Lake Hospital System.

20 Q What was your position there?

21 A I was the nurse recruiter and I also had done
22 employee relations there as well.

23 Q How long were you at Lake Hospital System?

24 A About seven years.

25 Q Prior to Lake Hospital Systems?

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1 A I did not work.

2 Q What is your education background?

3 A Bachelor's of human resources development.

4 Notre Dame.

5 Q The Notre Dame here or the Notre Dame in
6 South Bend?

7 A The Notre Dame in South Euclid, Ohio.

8 Q When did you receive your degree?

9 A May of 2001.

10 Q Have you received any other advanced
11 education or training since graduating from
12 Notre Dame in South Euclid?

13 A Nothing advanced.

14 Q Where do you reside, since you're no longer
15 at UH?

16 A You want my home address?

17 Q Yes.

18 A 3574 Wood Road, and that's in Madison.

19 Q What's the zip out there?

20 A 44057.

21 Q How did you first come to know Victoria
22 Johnson?

23 A My first interactions with her, to the best
24 of my recollection, is she and Sheryl came to
25 me with some concerns about Paul Simmons, a

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1 co-worker. I really don't recall any, you
2 know, dealings with her prior to that or
3 conversations. That's the first thing that
4 sticks out in my mind.

5 Q Had you at least met her prior to the Paul
6 Simmons stuff?

7 A Probably not formally. Possibly -- or
8 because we both sat on the same floor, I may
9 have said hello or realized who she was,
10 but...

11 Q What were these concerns that Ms. Johnson and
12 her supervisor came to you about regarding
13 Mr. Simmons?

14 A Sheryl had brought to my attention that
15 Victoria had gone to her with concerns that
16 Paul Simmons was fondling himself in his
17 cube. He sat across from her. So it was,
18 you know, the normal process, I would then
19 want to jump in and investigate.

20 Q I don't know what the normal process is.
21 You've got to tell me what the normal process
22 is.

23 A Okay. So because -- again, because I was the
24 HR generalist, you know, Sheryl -- oh.

25 (Ms. Kaminski entered the deposition suite.)

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1 MR. BULEA: That's all

2 right. It's just Kerin.

3 THE WITNESS: Okay.

4 A It's my responsibility then to take that
5 situation and investigate it. So that's what
6 I did. So, of course, I brought Victoria in,
7 talked with her, got her statement, you know,
8 found out the extent of what she saw, asked
9 specific questions about the situation,
10 gathered as much information as I could from
11 her to kind of look into the situation and
12 see what was going on.

13 Q Had you received any type of training on how
14 to investigate that type of situation?

15 A Yeah. I mean, I have been trained. Just
16 over the years, I had done some training. I
17 mean, just -- nothing -- if you're saying --
18 asking if I went and took formal classes, no.

19 Q Well, when I'm asking you what kind of
20 training you received, I'm keeping it pretty
21 open for you to describe to me what the
22 training was. I don't know how formal or
23 informal it was.

24 A So I had training at Lake Hospital on, you
25 know, just how to properly do an

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1 investigation. I had informal training from
2 leaders that I had had throughout my career,
3 you know, on how to do investigations. I
4 also -- when I came to UH, the compliance
5 person that I worked with was Carole Meisler.
6 She also shared information with me on
7 investigations as well. So just kind of
8 through my career had had different types of
9 training. So, you know, did I take an
10 outside class, formal class? No. But
11 classes within my career, experts that are in
12 the field.

13 Q Within the framework of UHPS, and that
14 facility is located out on Euclid Avenue in
15 Euclid, correct?

16 A Yes.

17 Q Do all of the UHPS employees work at that
18 location?

19 A No. It's what's considered the
20 administrative staff. So there's -- you
21 know, finance is there, there's a call center
22 there, our compliance officer sat there.
23 Different, you know, administrative-type
24 functions are there, but there were UHPS
25 employees scattered across Northeast Ohio,

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1 different locations.

2 Q Those would be the physicians, right?

3 A The physicians, as well as their staff,
4 uh-huh.

5 Q Well, at least with regards to the department
6 that Victoria Johnson served in, if her
7 supervisor -- or the supervisor of that
8 department -- I guess there were two -- are
9 Mr. Riddle and Sheryl Johnson, right?

10 A Sheryl reports to Steve.

11 Q But they would be considered supervisors in
12 the department that Victoria worked in,
13 correct?

14 A Yes.

15 Q Now, if either of those supervisors has an
16 issue, any issue with respect to one of their
17 subordinates, are you the contact person for
18 them to come to?

19 A Yes.

20 Q Are there any other contact persons for them
21 to come to other than you?

22 A Yeah. They could have gone to Angelique.
23 You know, we had an administrative person
24 that sat there; although, she wouldn't have
25 handled some of the things, but she could

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1 also help them with certain things, too.

2 Q Who is that administrative person?

3 A Her name is Joan Presti. She is the
4 administrative assistant for human resources.

5 P-R-E-S-T-I.

6 Q And to whom did Ms. Presti report?

7 A Angelique.

8 Q So it was a three-person HR staff there at
9 UHPS on Euclid?

10 A In that building, yes.

11 Q We'll get into the Paul Simmons a little bit
12 more in a second here. But prior to when
13 Sheryl Johnson had come to you with
14 Victoria's concerns about Mr. Simmons, had
15 any of Victoria's supervisors come to you
16 regarding any other issues that they were
17 having or concerns that they had regarding
18 Victoria Johnson, or was Paul Simmons the
19 first?

20 A The first that I recall was Paul Simmons.

21 Q So you don't recall any of Victoria Johnson's
22 supervisors coming to you with any concerns
23 about her prior to Paul Simmons; is that
24 correct? Prior to the Paul Simmons matter,
25 right?

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1 A I'm trying to remember the order of things in
2 my head because it has been a couple of
3 years. I don't -- I don't recall exactly.

4 Q So describe for us what you did in
5 investigating the complaint about Paul
6 Simmons.

7 A So I spoke to Victoria. I got her side of
8 the story, asked her for her concerns, asked
9 her what resolution she was looking for.
10 Asked her if she wanted to be immediately
11 moved from his area, you know, because they
12 did sit across from each other. I didn't
13 want her to be uncomfortable during the
14 investigation as we were looking into it.
15 She declined. I do recall that. She
16 declined, you know, being moved. I
17 investigated -- I spoke to Paul, himself, got
18 his statement. Paul's manager, got her
19 statement. Paul had been at the hospital
20 system for quite a few years and had worked
21 for that same leader most of that time.

22 There were two people that sat near --
23 in the same area that Victoria had mentioned.
24 I don't recall names. Again, really didn't
25 know them very well by name. So just

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1 gathered the facts surrounding, you know,
2 what she was claiming. Also looked back at,
3 you know, Paul's history, if there were any
4 other complaints historically, any other
5 performance issues, all those types of
6 things.

7 I also -- because when somebody makes
8 a claim such as that, we take that quite
9 seriously and we want to make sure we
10 thoroughly investigate it. So I also
11 contacted my manager, Angelique, to make sure
12 she was in the loop on it, as well as our
13 legal department, just to make sure that we
14 were covering the investigation thoroughly.
15 So when it is something at a higher level, I
16 always bring in anybody that I feel I need
17 that would be the expert person to help me
18 through it.

19 Q So as part of your investigation, you
20 interviewed Victoria Johnson, correct?

21 A Yes.

22 Q What did she tell you?

23 A She stated that he -- it appeared that he had
24 fondled himself. I asked her if, you know --
25 when she's -- to clarify what she meant by

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1 that. You know, was it outside of his
2 clothing. I mean, I needed to know seriously
3 how -- what did she see. She said that on
4 one or two occasions, it looked like his hand
5 lingered and he was, you know, shuffling
6 around. She didn't see anything other than
7 outside of the clothing. She felt that it
8 was an inappropriate gesture on his part.

9 I'm trying to think back.

10 Q Did she indicate how many times that she saw
11 Mr. Simmons do this?

12 A She said once, maybe twice.

13 Q Where was Ms. Johnson's cubicle or
14 workstation in relation to Mr. Simmons's --
15 Victoria Johnson's workstation, rather, in
16 relation to Mr. Simmons's?

17 A The way it's laid out, there's a couple of
18 rows of cubes with some -- like little hall
19 spaces in between. At that time, she was
20 sitting in the cube and he was across from
21 her. There was a hall.

22 Q So if this conference table is like the
23 hallway, you're sitting here, you would be
24 her, I would be him, we could look directly
25 at each other, right?

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1 A Right. And there's like a whole row of
2 cubes, so there was people on all sides as
3 well.

4 Q And you interviewed Mr. Simmons, correct?

5 A Yes.

6 Q What did he say?

7 A He said he -- you know, clearly was not doing
8 anything. He didn't know if he had done
9 something that he -- you know, that might
10 have appeared. He didn't mean to offend her.
11 He was extremely -- he was extremely taken
12 aback by it. Could not think of anything
13 that he would have done. He stated that
14 he -- and I remember this specifically
15 because he does. He had this big container
16 of pretzels on his table. And he said, maybe
17 I was wiping crumbs when I was eating
18 pretzels. He said, I really don't know what
19 I could have done that would have made her
20 think that.

21 But he was very -- you know, making
22 comments such as, if I did anything, I didn't
23 mean to offend her. I apologize. I did not
24 do anything inappropriate. I feel bad if she
25 thought she saw something. He voluntarily --

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1 he said, I don't want to make her feel
2 uncomfortable at all. I'll do whatever I can
3 to help the situation. His manager stated
4 that, you know, she -- in the many years she
5 had been leading him, he had always worked
6 with many females. Never had one complaint.
7 There really wasn't anything -- you know, he
8 acknowledged that he -- if he made her feel
9 uncomfortable, he was apologetic, but he did
10 not do anything inappropriate.

11 Q You said you interviewed others who worked in
12 the same general vicinity, cubicles in that
13 same row?

14 A There were two other ladies that had made a
15 statement that they had never seen anything
16 inappropriate by him that sat in that same
17 area.

18 Q So you've essentially got her word against
19 his word, right?

20 A Yes.

21 Q How did you resolve the situation?

22 A We -- she did not want to move. He was
23 voluntarily -- said he would move, not a
24 problem. So we moved him out of the
25 situation just so that she was comfortable.

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1 We couldn't substantiate that anything
2 inappropriate happened. The gentleman had
3 had no prior issues. So we moved him. We
4 offered to move Victoria. She didn't want to
5 move. Offered EAP if she felt uncomfortable
6 and wanted to talk to anyone about it.

7 Q You said you couldn't substantiate that he
8 did anything wrong. Were you able to
9 substantiate that he didn't do anything
10 inappropriate?

11 A Can you rephrase that?

12 Q You said you couldn't substantiate that he
13 did anything inappropriate, right?

14 A Correct.

15 Q Were you able to substantiate that he didn't
16 do anything inappropriate?

17 A There was -- it was just determined that if
18 it wasn't substantiated, we couldn't -- we
19 didn't feel it was appropriate to, you know,
20 punish somebody if we couldn't substantiate
21 that they did something wrong, especially
22 somebody that had a very solid record and a
23 very positive record. We felt that the best
24 thing we could do would be to do everything
25 we could to help the situation, so that was

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1 the resolution we came to.

2 Q At any point when you were conducting the
3 investigation into the allegations against
4 Mr. Simmons, did you have any concern as to
5 whether or not Victoria Johnson was making
6 this allegation up or lying?

7 A No.

8 Q Did she have any further complaints, at least
9 that you were aware of, regarding Mr. Simmons
10 after --

11 A No --

12 Q -- the investigation?

13 A -- nothing after. No.

14 Q Do you recall when this complaint was
15 initially made?

16 A I don't recall an exact date. I'm sorry.

17 Q Do you recall a month, a year?

18 A Oh, gosh. I'd be guessing.

19 Q Does February of 2012 sound about right?

20 A Yeah.

21 Q Do you recall how long it took you to conduct
22 the investigation and take the action that
23 you just described that you took?

24 A I can't tell you exact dates, but I can tell
25 you it would have been pretty immediate,

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1 especially for that type of a concern. I
2 would say within a couple of days by the time
3 we started it. I would have talked to
4 Victoria probably right away.

5 Q Now, once this incident involving Mr. Simmons
6 was completed, did you have any further
7 issues or contact with Victoria Johnson after
8 that?

9 A Yes.

10 Q When?

11 A She actually came to talk to me several
12 times. I mean, I can't -- again, I don't
13 have exact dates. Victoria -- I wanted her
14 to understand that if she ever -- I was the
15 HR -- her HR person and I wanted her to know
16 if she had any concern or any further issues,
17 I wanted her to come talk to me, wanted her
18 to know that I was her advocate. She did.
19 Oftentimes, she would come in and talk to me.
20 I shouldn't say often, but a few times she
21 came in and talked to me.

22 Q Let's talk about those. When was the next
23 time you recall her coming in to talk to you?

24 A Oh, gosh. I don't have exact sequence. I
25 know she talked to me -- there were some

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1 concerns about some performance issues that
2 she was having that were around that same
3 time. She came to talk to me about those.

4 Q What else did she come to talk to you about?

5 A She once came to me to talk about -- she had
6 a performance review and she wanted to talk
7 to me about that. If she wanted to, you
8 know, disagree with some of it, you know,
9 what's the process for that. And, again, I
10 don't have exact sequences of when this all
11 occurred. It's been a while. Anything else?

12 Victoria was having some -- she was
13 struggling at work a little bit with her work
14 situation. She was falling asleep at her
15 desk and so I talked with her several times
16 during that situation.

17 Q What else do you recall her coming to you
18 about?

19 A Let me think. I mean, it all kind of
20 surrounded those types of things.

21 Q So the falling asleep at the desk issue that
22 you just referenced, is that something that
23 Victoria came to you to discuss?

24 A She did not come to me to tell me she was
25 falling asleep at work. She indicated to me

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1 a couple of times -- and, again, I can't tell
2 you dates. It's been too long -- that she
3 was just feeling a lot of stress. Sheryl
4 came to me a couple of times with concerns of
5 Victoria sleeping at her desk. She was
6 witnessed by her, as well as by other people.
7 She was getting complaints from other people.

8 So we talked to Victoria about that
9 situation. We didn't want her to -- you
10 know, I wanted to talk to her about the
11 situation. I didn't want her to have her job
12 be at risk at all. Because falling asleep
13 during working hours at your workstation is
14 against policy. I was concerned. So, of
15 course, we brought her in to talk to her
16 about it to say, listen, this is the reports
17 that were coming to us, we want to talk to
18 you about it, what's going on.

19 Q What did Victoria have to say?

20 A She stated that she -- she did tell me that
21 she was on some medication. I didn't ask
22 what kind of medication or anything like
23 that, didn't get into those specifics, but
24 she did state that, yes, she was under some
25 stress and was taking some medications. And

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1 she did admit that she would fall asleep at
2 her desk occasionally. She stated that she
3 would, you know, try to do that on her
4 breaks. But being at her workstation, we
5 suggested it probably wasn't the best place
6 to rest. If she wanted to rest, we suggested
7 she either go out to her car or go into the
8 break room at least. Again, when you sit in
9 a cube, people walk by and they don't always
10 know maybe if you're on break.

11 Q Victoria would get breaks during the course
12 of the day; is that correct?

13 A Yes.

14 Q All employees get --

15 A All employees get -- the policy is everyone
16 gets a break, unless work mandates that you
17 can't take a break. There are what's
18 considered paid and unpaid breaks. So lunch
19 period -- if you take your lunch period and
20 go away or clock in and out, that's unpaid.
21 But there were also an allotted -- if your
22 workload supported it, you could take a paid
23 break. And I think that department generally
24 allows that, either a morning and afternoon,
25 15 minutes. Or, you know, again based on the

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1 workload, sometimes you couldn't get those
2 in, but...

3 Q Was there a policy that people in this
4 department could take a 15-minute break every
5 two hours?

6 A I don't know if there was a policy in the
7 department.

8 Q Were there any policy limitations on what
9 employees could do on their breaks?

10 A The limitations that I'm aware of were, if
11 they were a paid break, they could not leave
12 the premises.

13 Q What does that mean, not leave the premises?

14 A Because you're being paid, even if you want
15 to go step away and take a break, if you
16 leave the premises based on liability, you
17 have to clock in and out, which means you're
18 not paid, so it doesn't jibe. So paid breaks
19 had to be on location.

20 Q I was going in a little bit different
21 direction than you were in your answer. What
22 would constitute leaving the premises?

23 A Leaving UH property.

24 Q So going out to the parking lot, would that
25 be leaving the premises?

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1 A I don't believe so.

2 Q There was a parking lot on the property,
3 right?

4 A Yes.

5 Q Stepping outside the building would not be
6 considered leaving the premises, right?

7 A Correct.

8 Q Getting in the car, driving off to
9 McDonald's, that would be considered leaving
10 the premises, right?

11 A Yes.

12 Q And there was a break room, correct?

13 A Yes.

14 Q Vending machines and things like that that
15 people could go to?

16 A Yes.

17 Q Was there any policy that you ever saw that
18 said an employee could not take a nap while
19 on their break?

20 A I don't recall seeing a policy that said --
21 there's no system policy. The policy is you
22 can't sleep at your station while on the
23 clock or being paid.

24 Q Was that a written policy?

25 A It's a corrective action policy, yes. It's

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1 written.

2 Q And the document that it's written in, what
3 is that document entitled?

4 A It's the corrective action policy -- human
5 resources corrective action policy. I'm
6 going to guess at the number because, again,
7 it's been a little while. I think it's HR 72
8 possibly. It references sleeping at work.

9 Q Does it reference sleeping at work on paid
10 breaks, unpaid breaks, or both?

11 A I don't know the specific wording.

12 Q Is that a policy that Victoria Johnson's
13 supervisors should have been aware of?

14 A It's -- every employee has access to all of
15 the -- yes, definitely. Every employee has
16 access to those policies. They're online.

17 Q Do you recall when it was that Sheryl Johnson
18 came to you regarding concerns about Victoria
19 Johnson sleeping at her desk?

20 A I don't recall exactly.

21 Q Do you recall how many times she came to you?

22 A At least two, three.

23 Q I think you testified a few moments ago that
24 when you confronted Victoria about this, she
25 said that she was under some stress?

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1 A Yes.

2 Q Did you ask her what she was under stress
3 regarding?

4 A Yes. Well, yeah, during the conversation,
5 she shared that she was feeling stress from
6 work, from life.

7 Q Did she elaborate on that?

8 A Just general statements that I recall.

9 Q Well, what do you recall her saying?

10 A I recall her saying that, you know, she felt
11 her job was stressing her out.

12 Q Did you ask her what it was about her job
13 that was stressing her out?

14 A She -- yeah. I mean, I asked her specifics
15 about, you know, like what's going on, what
16 can we do to help, these kinds of things. So
17 just so you understand, when she came to me
18 with concerns and sleeping at the desk and
19 she's telling me that she's stressed out, I
20 was trying to do what I could to help her.
21 So in order to help her, I had to ask her
22 questions about, well, what can we do to
23 help. Again, I offered her EAP several
24 times.

25 The stress she was feeling at work, I

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1 recall her telling me that she felt stressed
2 by just the pressures of her job. Again, she
3 was having some performance issues that
4 Sheryl and Steve were both working with her
5 on. So stress from that.

6 Q What were the performance issues that
7 Victoria referenced that Steve Riddle and
8 Sheryl Johnson were working with her on?

9 A Some of it surrounded productivity. She's a
10 rep for the providers for Medicaid
11 applications, and so calls would come in
12 and -- yeah, I don't -- again, I don't recall
13 exactly, but I think she was having trouble
14 keeping up with -- some of the calls were
15 rolling to other reps because she was
16 unavailable. That's one thing I recall was
17 an issue. Not being responsive to some of
18 the providers and the customers that she was
19 supporting. Those types of things.

20 Q What else do you recall?

21 A Part of her job -- main function of her job
22 were these applications -- provider
23 enrollment applications. She wasn't
24 completing them appropriately. There was
25 some, you know, conflict there that was

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1 causing her stress.

2 Q Who said that she wasn't completing these
3 applications appropriately?

4 A There's -- her leadership.

5 Q What did her leadership say regarding how she
6 was not completing these applications
7 appropriately?

8 A There's a section where you put the contact
9 information for the physician. The process
10 at UH is to put the enrollment specialist's
11 contact information, because they're the ones
12 that handle the providers' accounts. And,
13 again, there was meetings where they
14 instructed how to complete these
15 applications.

16 And Victoria had questioned about that
17 phone number. And they looked into it and
18 said, no, we still want you to put your
19 number there. So she had concerns that --
20 because it states, you know, we need the
21 provider's number, she felt that it had to be
22 the provider's number, so she was pushing
23 back on that. She didn't want to put
24 her phone number -- it's not her personal
25 number; her UH number there. And that's the

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1 process that UH follows.

2 So she continued to not put her number
3 there. And her manager, Sheryl, said, if you
4 don't want to put yours, put mine, but we
5 can't put the specific provider number there.

6 So there was stress there because she felt
7 she shouldn't put her number -- her UH work
8 number, and they were instructing her to do
9 so.

10 Q Well, isn't it true that it was the company
11 that was processing the applications that was
12 telling Victoria that she was putting the
13 wrong number down?

14 A That is not my recollection.

15 Q When you spoke with Victoria Johnson about
16 these applications, did she tell you that the
17 company that processed these applications was
18 telling her to do it a different way?

19 A She told me that she contacted the company,
20 herself, when she started questioning it.
21 She spoke to a rep there -- I don't recall
22 that person's name -- who told her that she's
23 supposed to be putting a number there that
24 can directly contact the physician, the
25 provider.

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1 So Victoria then continued to push
2 back on her leadership and say, I'm not going
3 to put my number. So her leaders looked into
4 it, themselves, to confirm that UH was
5 following the process appropriately, and they
6 confirmed that they were. So Victoria
7 continued to interpret what they told her as
8 I need to put the direct provider number. So
9 then Victoria called, I believe, if I
10 remember the sequence of events correctly --
11 because there was all this push-back going
12 on. And I was advising Victoria at the time,
13 you need to follow the directives of your
14 leaders, you know, but we'll work through
15 this process. But in the meantime, follow
16 the directives of your leaders. She
17 continued to question and push it and refused
18 to put the number down they were telling her.

19 So then she called the compliance
20 hotline, if I recall, to make a complaint.
21 So then, again, as part of my role, I
22 investigated that with the compliance
23 officer. The compliance officer, Carole
24 Meisler, called that company -- and I don't
25 remember the name of it, I think it starts

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1 with a C -- and actually asked Victoria who
2 did you speak to. So to make sure we were
3 all getting the right information, Carole
4 spoke to that person's supervisor. So she
5 couldn't get ahold of that person that
6 Victoria said she spoke to, but she spoke to
7 that person's supervisor who confirmed that
8 you don't have to put the provider's exact
9 phone number. As long as the provider can be
10 contacted through that number, UH is doing
11 the right thing.

12 Q Were you present when Ms. Meisler had that
13 conversation with the supervisor?

14 A I actually was. She did it in my office.

15 Q Was that a conference call where you could
16 hear what the other supervisor was saying?

17 A Yes, I absolutely could.

18 Q Did you take any notes as to what that
19 supervisor said?

20 A Yes. Well, actually, the notes were -- I
21 jotted my own little, maybe, informal notes
22 possibly, but I know Carole Meisler is the
23 one -- because she was heading the
24 investigation, she recorded it, documented
25 it, and submitted it. And I believe she

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1 shared that with Victoria. I'm not -- I know
2 she shared the results with Victoria, because
3 that's part of the process. And I recall
4 that, but I don't -- you know, she would have
5 had the official documentation on that.

6 Q But you said you did take notes during that
7 meeting, during that conversation?

8 A I'm thinking I would have. I don't recall if
9 I exactly did. But I vividly remember the
10 conversation because she came into my office
11 and made the phone call.

12 Q Now, isn't it true that the problem that
13 Victoria was having with these applications
14 is that the company that was responsible for
15 processing them was rejecting applications
16 that she was submitting?

17 A I do not know that.

18 Q Did Victoria ever tell you that --

19 A No.

20 Q -- applications that -- let me finish the
21 question.

22 A Okay.

23 Q Did Victoria ever tell you that applications
24 she was submitting to this company, which is
25 called CGS, was rejecting applications that

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1 she was submitting because of their inability
2 to directly contact the physician at the
3 number that she was providing? Did Victoria
4 ever tell you that?

5 A She never told me that.

6 Q As it pertains to these applications, do you
7 have any understanding as to who it is that
8 sets the rules regarding how these
9 applications are to be completed?

10 A Can you say that again? I'm sorry.

11 Q First of all, do you know what the
12 application is called?

13 A Not specifically.

14 Q Have you ever heard of an 855I form? Do you
15 recall that phrase ever coming up?

16 A I don't recall that.

17 Q What are these applications for?

18 A To my recollection, it's Medicaid or Medicare
19 reimbursement applications. I do not work in
20 that department. I do not know.

21 Q So you don't know --

22 A I am going off of hearsay from what they told
23 me.

24 Q So you don't know why these applications have
25 to be submitted; is that correct?

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1 A Correct.

2 Q You don't know who sets the rules for how
3 these applications are to be completed?

4 A Correct, yes.

5 Q Have you ever seen the application before?

6 A I may have briefly seen it once. I don't
7 really recall.

8 Q When you sat in on the call that Ms. Meisler
9 had with the supervisor -- you don't recall
10 the name of the supervisor; is that correct?

11 A I don't. No, I do not.

12 Q Do you recall exactly what the supervisor
13 said?

14 A Yes. Yes. I recall that she said that the
15 process that -- if UH -- the process that UH
16 had in place, that the provider enrollment
17 specialist contact number was there, was
18 appropriate as long as that physician or
19 provider could be contacted through that
20 number. And because our provider enrollment
21 specialists support that provider, that that
22 was appropriate. That was acceptable.

23 I remember her saying, we understand
24 that physicians cannot be directly contacted
25 sometimes through their direct line because

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1 they're seeing patients. Because they
2 understand that, they supported the process.
3 She said the process that UH is following is
4 appropriate.

5 Q Did the supervisor at CGS state that they did
6 not expect the provider to necessarily
7 directly answer the phone himself or herself
8 when that number was called?

9 A Yes.

10 Q Did the supervisor give an example about a
11 large hospital where they would call what's
12 called the main number? Do you recall that
13 ever coming up during the discussion?

14 A I don't recall.

15 Q You don't recall that coming up?

16 A I don't recall that part of the conversation.

17 Q You referenced a few moments ago that you
18 might have taken notes about what took place
19 during that conversation, right?

20 A Yeah.

21 Q When is the last time you looked at those
22 notes?

23 A I don't recall.

24 - - - - -

25 (Plaintiff's Exhibit No. 4 was marked.)

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1 - - - - -

2 Q I'm going to hand you what's marked as
3 Plaintiff's Exhibit 4. Have you seen these
4 documents prior to today?

5 A Yeah. I wrote them.

6 Q They're Bates stamped pages 1420 through
7 1432, so it's about 12 pages here, right? 13
8 pages?

9 A Yeah.

10 Q And these are all in your handwriting?

11 A Yep. Looks like it.

12 Q You've just had an opportunity to look
13 through what we've marked as Exhibit 4. Do
14 you see in there anywhere notes of the
15 conference call that you and Ms. Meisler had
16 with the CGS supervisor whose name you do not
17 recall?

18 A I mean, I see on 1429 and 1430 that
19 there's -- these are notes surrounding that,
20 but I don't know that that would have been
21 the call. This, I think, is my conversation
22 with Victoria -- or, you know, notes
23 surrounding that.

24 Q When you say these are your notes of your
25 conversation with Victoria, let's identify

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1 what page you're referring to and what

2 specific notes you're referring to.

3 A So 1429, where it's dated 7/16 at the top,
4 this looks like -- where it references, feels
5 will go to jail as a result of this, all a
6 big joke, understands the risk, fraudulent,
7 risk is lying.

8 That would have been what Victoria
9 shared with me about her concerns. I recall
10 her saying she felt that she could go to jail
11 because she was putting that number down
12 wrong. That would not have been the phone
13 call to CSG -- or CGS.

14 Again, at the bottom, it looks like
15 more conversation with Victoria about it.
16 Doesn't feel anyone has gone to Steve. Out
17 of state application, they fill out for
18 provider. Docs sign -- I don't -- I don't
19 see --

20 I mean, the next page, 7/26, closure
21 CGS, clarified by compliance, will submit.
22 That could have been my notes during the
23 phone call or after we got off the phone with
24 the supervisor. Again, they just would have
25 been reminder notes to myself, because Carole

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1 Meisler would have taken the official notes.

2 Q So all of the notes on page UHPS Johnson 1429
3 are notes that you had of your conversations
4 with Victoria, correct?

5 A That's what it appears. Because I've written
6 down what she would have expressed to me as
7 concerns.

8 Q And the notes on page 1430 may be notes you
9 made after the call to the CGS supervisor?

10 A I -- it's possible.

11 Q You're not certain, though, correct?

12 A Because I don't remember dates of when we
13 actually had that phone call, I can't say for
14 certain.

15 Q Was anybody else present during this
16 conference call, other than yourself and
17 Ms. Meisler?

18 A No.

19 Q Do you recall how long the conference call
20 lasted?

21 A Not exactly.

22 Q Generally?

23 A Maybe 10 to 15 minutes. 10 minutes.

24 Q Do you recall whether or not during that
25 conversation there was any discussion

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1 regarding why any applications that Victoria
2 Johnson had been submitting to CGS were being
3 rejected by CGS?

4 A That did not come up.

5 Q It's your testimony here today that Victoria
6 Johnson never told you that CGS was rejecting
7 the applications that she was submitting,
8 correct?

9 A I do not recall her telling me that at all.

10 Q Do you recall Victoria telling you that
11 people from CGS were telling her that she
12 could not use her direct workstation number
13 on those applications?

14 A I recall her telling me that she reached out
15 to CGS and that they agreed that -- you know,
16 that -- with her concern about putting that
17 number. But, again, that's why we called
18 them directly ourselves -- you know,
19 compliance did during the investigation, to
20 confirm.

21 Q When Victoria came to you and met with you --
22 and it appears to be on the 16th of July; is
23 that correct?

24 A Yeah, according to these notes.

25 Q When you met with Victoria on that date, did

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1 Victoria show you any documents or e-mails
2 that she had received regarding this
3 application process that was at issue?

4 A I don't recall.

5 Q When you met with Victoria on July 16, did
6 she indicate to you whether anybody else was
7 concerned that this was fraudulent or illegal
8 or they might go to jail, other than her?

9 A She -- I asked her -- I remember talking
10 about this to ask her if, you know, was it
11 like a general consensus that people were
12 concerned about this, and she said there were
13 a couple of people that had questions about
14 it, but that they addressed it during a
15 meeting. But she still had concerns after
16 that meeting.

17 Q Did she tell you who those individuals were?

18 A No.

19 Q Did you ask her who those individuals were?

20 A I don't recall. I don't recall. If I would
21 have, I probably would have written their
22 names down. I mean, it was more of a
23 general, yeah, there's a little bit of
24 concern, questioning it. Apparently, it had
25 been brought up a couple of times in

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1 meetings, which -- this I do recall. You
2 know, when they questioned that portion,
3 that, you know, they addressed it and then
4 addressed it again in a meeting after -- you
5 know, Steve and Sheryl to say we have looked
6 into this a couple of different times, just
7 put your number there. We confirmed it's
8 appropriate.

9 Q During the conference call then that you and
10 Ms. Meisler had with the supervisor from CGS,
11 did the issue of what constitutes being able
12 to directly contact a provider come up?

13 A Carole specifically stated to the supervisor,
14 this is what we ask our provider enrollment
15 specialists to put in, their number, is that
16 appropriate? And the supervisor said, yes,
17 that's fine, as long as we know if we call
18 with a question or concern that we can reach
19 the physician through that number or through
20 that person.

21 Q Well, if somebody contacts Victoria Johnson's
22 number, do you know whether or not any
23 particular physician can be reached by
24 calling Victoria at that number?

25 A I know that Victoria can reach the

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1 physicians.

2 Q How does she reach the physicians from that
3 number?

4 A She would then contact them.

5 Q Could Victoria, if she wanted to, be able to
6 put the CGS representative on hold and
7 connect that representative with that
8 doctor -- with that provider? They're not
9 all doctors, but...

10 A I --

11 Q You look like you don't know.

12 A I don't know. I mean, I assume so. I mean,
13 I don't know how many lines she had on her
14 phone, if she could do that, if she had the
15 ability to do that. I'm sure she could.

16 Q Do you know if she had the ability to do
17 that?

18 A I do not. Personally, I do not.

19 MR. HERRON: I need about a
20 five-minute break

21 (Recess from 11:54 a.m. to 12:09 p.m.)

22 BY MR. HERRON:

23 Q When you were having these conversations with
24 Victoria Johnson regarding how these
25 applications were to be completed, I notice

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1 in your notes that you did make a reference
2 to 855I. I guess it's 1427 again.

3 A Okay.

4 Q Did you ever actually take a look at the
5 form?

6 A I don't recall.

7 Q Did you ever review any of the instructions
8 on how that form was to be prepared?

9 A I don't recall.

10 Q In any of the meetings or the conversations
11 that you had with Ms. Meisler, did you and
12 her review the form or the instructions on
13 how it was to be completed?

14 A She knew how to fill out the form or how it
15 was to be completed.

16 Q How did she know how the form was to be
17 completed?

18 A And when I stated that I don't recall if I
19 reviewed it; I vaguely remember that I may
20 have seen it. I don't recall how in-depth I
21 reviewed it. But I do recall that Carole
22 knew intimately about the application.

23 Q How do you know that she knew intimately
24 about the application?

25 A She was very familiar -- she verbalized to me

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1 that she was very familiar with the form and
2 understood it.

3 Q Did she show you any of the rules regarding
4 how it was to be completed?

5 A I don't recall seeing rules. I recall
6 talking about them.

7 Q Do you recall Victoria Johnson showing you
8 any e-mails that she had received from
9 anybody at CGS that recited the rule that
10 they claimed was not being followed?

11 A No, I don't recall.

12 Q Did you, in your conversations with Victoria,
13 ask her if she was receiving any complaints
14 from CGS about how the forms were being
15 completed?

16 A My recollection, when we were talking about
17 it, that she initiated the questions and
18 concerns. Now, I don't recall why she did.
19 I didn't specifically ask her, that I
20 remember. Did you get complaints from CSIQ
21 {sic}. I remember talking to her about why
22 she had concerns about the phone number and
23 telling me. You know, well, what is it, why
24 are you concerned about this, if your
25 leadership is telling you to do it, why do

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1 you have concerns, so....

2 Q What did she say about why she had concerns?

3 A She didn't feel comfortable putting her
4 direct work line there. She felt it should
5 be the provider's direct work line, based
6 on -- she said to me that it was because the
7 form said -- like, asked for the provider's
8 number or the -- I don't remember exactly.

9 You know, the instructions say what's the
10 contact number or the provider's number. So
11 she felt that putting her number in there was
12 wrong.

13 Q And you don't recollect her relating to you
14 that she had been told by CGS that the number
15 she was putting down was incorrect? You
16 don't recall her telling you that; is that
17 correct?

18 A What I recall is that she reached out to
19 someone at CGS or CSG to ask about the
20 number, to clarify what number she should put
21 in there. And she told me that she felt that
22 the person that she talked to agreed with her
23 that she should put the provider number, if
24 she could, there. Now, again, that was her
25 telling me that. She never showed me

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1 anything, that I remember, that showed
2 definitive information. So then my question
3 to her was, well, did you talk to Steve --
4 you know, Steve or Sheryl. And that's when
5 we had conversation around meetings. And I
6 said, well, until you have definitive,
7 different -- continue to question it, if you
8 feel, but follow the instructions of your
9 leaders.

10 Q Let me ask you this then. Let's just assume
11 for the purposes of this question that
12 Victoria Johnson is being told by CGS that
13 the number that she's being told by her
14 supervisors to use is the improper way of
15 doing it.

16 Would you agree with me that that
17 would be pulling her in two different
18 directions?

19 A Yes, I would agree.

20 Q Tell me then why Victoria should follow what
21 her supervisors are saying and not what CGS
22 is saying.

23 A Her supervisors were instructing her that
24 they also looked into it and that they were
25 confident that they were asking her to do --

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1 it was their responsibility. They're the
2 leaders of the department, and if they're
3 instructing her to do so -- I didn't want her
4 to get in trouble for not following the rules
5 or the instructions by her leaders. They're
6 telling her, we've confirmed it's okay.

7 She's investigating on her end and saying
8 that they're telling me no. Let's figure it
9 out, but in the meantime, follow the
10 directives of your leader. I didn't want her
11 to get in trouble.

12 Q Even if that results in applications that
13 she's responsible for submitting for the
14 physicians or other providers being rejected?

15 A I would -- I would view that as it would be
16 the responsibility of her leadership, because
17 she's doing what they're telling her.

18 Q What is your understanding as to what CGS is?

19 A My understanding would be they're a vender.
20 I don't know honestly.

21 Q Are you aware that they have a contract with
22 the Department of Health and Human Services
23 to process Medicare and Medicaid provider
24 enrollment applications so that doctors can
25 perform services for patients or clients who

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1 receive Medicare or Medicaid benefits?

2 A I understood they were a third party that we
3 worked with. I knew they had some sort
4 of, you know, like, authority with these
5 applications. I don't know the full extent
6 of what they do, no.

7 Q Was it your understanding that CGS had a
8 contract with the United States Department of
9 Health and Human Services to process these
10 applications? Were you aware of that?

11 A I was not aware of that.

12 Q Were you aware that the Center for Medicare &
13 Medicaid Services, which is an agency within
14 the Department of Health and Human Services,
15 sets the rules on how these forms are to be
16 completed? Were you aware of that?

17 A No.

18 Q Did you have any discussion with Ms. Meisler
19 regarding that issue, regarding who sets the
20 rules on how these forms are to be completed?

21 A Yeah, regarding the importance of the
22 application and what information that's in
23 there, I knew there was an importance. But
24 they're the experts in that area, so I knew
25 that, you know, if -- you know, our

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1 compliance department and our leaders of that
2 area were investigating it on their own, too,
3 making sure and confirming that they were
4 doing it appropriately. I trusted in their
5 knowledge.

6 Q You used the phrase a moment ago, they're the
7 experts. You're referring to the compliance
8 department, right?

9 A I'm -- yes. I would say -- like, I'm an HR
10 person, so HR to me is where I would, you
11 know, say I have more expertise than somebody
12 that's a physician. Yes, they, to me, would
13 be the -- that's their line of business, so
14 they should have the knowledge. Yes.

15 Q And if the personnel from CGS who have the
16 responsibility to process these applications
17 are saying it's to be a different way, how do
18 you reconcile who's right and who's wrong?

19 A I think that if there's a question
20 surrounding something like that, then the
21 leadership of those areas work with that
22 group to reconcile it. And then that
23 information is shared with their employees.

24 Q Do you know if Ms. Meisler is an attorney as
25 well?

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1 A Yes, she is.

2 Q Do you have any understanding as to what the
3 consequences are or when an 855I application
4 is rejected by CGS or Department of Health
5 and Human Services, Center for Medicare &
6 Medicaid Services?

7 A No, I do not.

8 Q You're not aware that if a provider provides
9 services for a patient on Medicare and
10 Medicaid and they haven't been approved as a
11 provider for Medicare and Medicaid, that the
12 hospital does not get reimbursed for those
13 services? Were you aware of that?

14 A I would say I have some outside knowledge of
15 that, just living in that world. I don't
16 know details.

17 Q Is that something that had come up when you
18 were working out at Geauga or at Lake?

19 A Not that I recall.

20 Q Outside of the phone conversation between you
21 and Ms. Meisler and the CGS supervisor, whose
22 name you don't recall -- by the way, we took
23 a break for the while. Have you had a chance
24 to refresh your recollection as to what the
25 name of that person was?

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1 A I wouldn't be able to remember even if I had
2 all day.

3 Q Was there any follow-up communication between
4 UHPS and that supervisor or CGS confirming
5 the substance of that phone conversation,
6 anything in writing that we can point to?
7 And I'm not asking about any e-mails that you
8 or Ms. Meisler would have written to Victoria
9 Johnson --

10 A I do not know.

11 Q -- but anything that came from that
12 supervisor or somebody else at CGS confirming
13 that conversation.

14 A I don't know.

15 Q So you don't know if CGS provided any
16 correspondence or e-mail to Ms. Meisler
17 regarding what their expectations were on how
18 the form was to be completed?

19 A I couldn't say for sure. I don't recall.

20 Q Did Ms. Meisler relate to you ever having
21 received anything from CGS confirming that
22 phone conversation?

23 A I don't recall.

24 Q Ms. Meisler -- I don't know if assistant is
25 the right term, but is there a Ms. Wahl that

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1 works with -- Cheryl Wahl?

2 A Yeah. Cheryl Wahl is, I believe, the VP.

3 And that is who Carole Meisler reported to.

4 Q Do you recall seeing anything that CGS would
5 have sent to Cheryl Wahl confirming what
6 CGS's expectations were on how to complete
7 these forms?

8 A I don't specifically recall seeing anything
9 directly from CGS.

10 Q Do you recall either Ms. Wahl or Ms. Meisler
11 telling you that they received any type of
12 written confirmation from CGS?

13 A I do recall that. And I shouldn't say
14 written. I do recall them sharing
15 information that they confirmed that they --
16 you know, that they -- they investigated it.
17 Again, I'm not in compliance. They
18 investigated on their side based off the call
19 that Victoria placed. And I recall
20 correspondence back to Victoria confirming
21 that they investigated it and supported the
22 process that UH followed. That's my
23 recollection.

24 Q And they, are you referring to Meisler and
25 Wahl, or are you referring to CGS?

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1 A I am referring to Cheryl and Carole.

2 Q And you communicated all of this to Victoria?

3 A Victoria and I talked a lot. I don't
4 remember exactly how the --

5 Q Did you communicate what you heard during
6 this phone conversation to Victoria?

7 A Honestly, I don't recall. I recall lots of
8 conversations with Victoria around it, but I
9 don't recall exactly -- because that part of
10 it -- although, I was witness to the phone
11 call with Carole, because we always partner
12 on these investigations -- it's a compliance
13 issue. It's not HR.

14 Q Going back to the sleeping issue. Did Steve
15 Riddle ever ask you for any type of guidance
16 on employees sleeping at their workstations
17 during their break?

18 A Yes. He -- yes.

19 Q What did he ask you?

20 A He and Sheryl had concerns and asked for, you
21 know, guidance on what would be appropriate.
22 He had concerns because it -- you know, for
23 example, Victoria is sleeping in her cube and
24 there's senior VPs that are right there in
25 that same area. He was concerned about

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1 professionalism of the department and just
2 how to address it.

3 Q When an employee back in this timeframe would
4 be taking a break and staying at their
5 cubicle, were there any limitations on what
6 they could do while they were taking their
7 break? I'll break it down a little bit.

8 Were there any limitations that you're aware
9 of?

10 A Not that I'm aware -- I mean, I guess I'm not
11 really sure what you're asking. When you say
12 limitations, what do you mean?

13 Q Well, if an employee is on their break and
14 they're taking their break at their cubicle,
15 can they eat?

16 A As far as I know.

17 Q Can they take or make personal phone calls?

18 A I mean, I -- there wasn't anything that --
19 formally written that said you couldn't make
20 personal phone calls.

21 Q If they're on their break sitting at their
22 computer -- they have computer terminals,
23 right?

24 A Yes.

25 Q Internet?

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1 A Yes.

2 Q If they're sitting at their break, can they
3 play Angry Birds or Candy Crush on their
4 break?

5 A I can tell you what the policy says. I don't
6 know what -- there's many different
7 departments in the hospitals. They might
8 have different rules within each department.

9 Q We're going to stick with Victoria's
10 department.

11 A I don't know if there was a strict policy
12 against it within their department. I know
13 that the general policy is that excessive use
14 of these types of things would be forbidden.
15 Yes, they would be against policy. So
16 excessive use of, you know, using personal
17 phone, using the system's phones for
18 personal, excessive use of internet,
19 excessive use -- that is against policy.

20 Now, UH doesn't forbid people from doing
21 that, but if it turns into an issue that's
22 impacting work, then yes.

23 Q Now, since I'm focusing my questions right
24 now on what they're doing during their break,
25 obviously they're not working during their

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1 break; that's their time, right?

2 A Correct, right.

3 Q If they want to play -- if their break is 15
4 minutes and they want to spend 10 minutes
5 trying to get through a level of Candy Crush,
6 that's not forbidden, right?

7 A I don't think so.

8 Q But if some high-level executive were walking
9 through seeing an employee on their break
10 playing Candy Crush, then that might not look
11 too professional, would it?

12 A Correct.

13 Q If they're sitting yakking on their phone to
14 their girlfriend or their boyfriend or
15 whatever, that might not look too
16 professional either, right?

17 A Correct.

18 Q But it's not prohibited?

19 A Not that I'm aware.

20 Q If they wanted to sit and watch Netflix for
21 20 minutes on their 20-minute break, that
22 wouldn't be prohibited; would it be?

23 A You know, there's a line. I mean, I'm not
24 going to say no, but...

25 Q Well, we could say --

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1 A There's a professional behavior policy, too,

2 that --

3 Q So obviously they wouldn't be allowed to like
4 sit and watch pornography at their
5 workstation?

6 A Correct.

7 Q I would hope so. But other than that, there
8 really aren't too many limitations on what
9 somebody can do on their break; that's their
10 15 minutes to clear the cobwebs out of their
11 head, right?

12 A Yeah, when they're on break, there's some,
13 you know, leeway to what they can do, as long
14 as it lies within the professional behavior
15 policies.

16 Q When Steve asked you for guidance on what to
17 do with the sleeping-at-the-desk issue, how
18 did you respond to him?

19 A I understood the concerns. Even if you're on
20 break, sometimes people don't know you're on
21 break. And really, people shouldn't be --
22 just as a professional courtesy, shouldn't be
23 sleeping at their desk. I also advised that
24 to Victoria. You know, I fully supported her
25 need to -- if she needed to rest or if she

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1 was feeling stressed, but, you know, go to
2 the break room or that type of thing.

3 Q When you responded to Mr. Riddle's concerns,
4 did you cite to him the policy that you
5 referenced earlier in your testimony? And I
6 think you called it HR 72. Did you reference
7 that to Mr. Riddle in your response to him?

8 A I don't recall exactly, but there was
9 discussion around what was acceptable per
10 policy as far as sleeping.

11 Q Was that discussion a verbal conversation or
12 was that in an e-mail exchange?

13 A That would have been verbal, I'm sure.

14 Q Now, Mr. Riddle implemented a policy against
15 sleeping at your cubicle on breaks,
16 workstation on breaks, right?

17 A Right.

18 Q And he did that on July 23 of 2012; do you
19 recall that?

20 A Yeah, I recall him sending out an e-mail to
21 everybody. Because the expectation is when
22 you want to clarify something, you know, it's
23 department-wide.

24 Q Do you recall there being any issues with
25 Victoria Johnson sleeping at her workstation

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1 on breaks after Mr. Riddle disseminated that
2 policy on July 23 of 2012?

3 A Not that I recall. I don't remember exactly
4 timeline-wise.

5 Q Do you recall what date it -- well, back that
6 up a second here.

7 After you and Ms. Meisler had the
8 conference call with the CGS representative,
9 I think the testimony has been that both you
10 and her communicated to Victoria Johnson what
11 was the results of that phone conversation,
12 correct?

13 A I don't remember exactly my conversation with
14 Victoria. I remember talking about the whole
15 situation several times with her. I just
16 don't recall exactly what I would have said
17 back to her after that conversation.

18 Q Do you recall when it was that you got back
19 to her about that?

20 A Again, it was a compliance hotline, so it was
21 their responsibility to respond back to her.

22 Q Did you respond back to her?

23 A I may have talked with her.

24 Q Do you recall when that was that you talked
25 to her?

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1 A No, I do not.

2 Q When compliance got back to her, do you know
3 when that was?

4 A No. I don't remember dates.

5 Q Do you recall whether compliance got back to
6 Victoria verbally or was that through e-mail?

7 A It would have been a documented response
8 back.

9 Q Would you have been copied on that?

10 A Possibly. Maybe not. It just depends on --
11 again, I'm part of it, just because I'm the
12 HR person. But, again, it was a compliance
13 complaint, so they're the facilitator of it.
14 So they may have copied me. I don't know.

15 Q Well, I think the term that you used and the
16 phrase that you used to describe it earlier
17 was you teamed up with them?

18 A We partner on the investigation, sure, yeah.
19 Because it's the employee that falls under my
20 group that I'm supportive of.

21 Q So would you expect compliance to keep you in
22 the loop when they communicate directly with
23 the employee who's in your department?

24 A Yeah. At least verbally.

25 Q Now, there came a point in time where

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1 Victoria was referred to the EAP program. Do
2 you recall that?

3 A Yes.

4 Q When was that?

5 A I don't remember dates. It would have
6 been -- probably end of July, early August.
7 End of July. I'm guessing at dates.

8 Q Was that a mandatory referral or a voluntary
9 referral?

10 A It was mandatory at that point.

11 Q When did the issue of making a mandatory
12 referral for Victoria Johnson to the EAP
13 program, when did that issue first come up?

14 A Are you asking for a date?

15 Q Yes, I am.

16 A I do not remember.

17 Q Well, how soon before the decision was made
18 to make the mandatory referral did the issue
19 first come up? Did they all come up the same
20 day, a few weeks before, months before, days
21 before, what? What's your recollection?

22 A It would have probably been a few days
23 before. We don't make decisions like that
24 quickly and we always -- again, as I
25 mentioned before, part of the process would

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1 be to bring in EAP and talk with them,
2 explain the issues and the concerns, and then
3 a decision is made. So it wouldn't be a rash
4 decision.

5 Q I would hope not. Who first brought up the
6 issue of making a mandatory EAP referral for
7 Victoria Johnson?

8 A I don't know that it was one person in
9 particular --

10 Q Well, who?

11 A -- in my recollection.

12 Q Who all was it?

13 A It amounted concerns about her -- her own --
14 you know, she came to me numerous times
15 herself about -- I mean, I -- I woke her up
16 one day sitting at her cube. Personally.
17 And I asked her, are you okay? And she came
18 to me later that day and said, I'm really
19 sorry, I know it looked bad, I was sleeping,
20 but I was just really tired.

21 Q She also told you she was on her break at
22 that time, right?

23 A I asked her if she was on her break and she
24 said yes.

25 Q Was she lying to you when she said she was on

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1 her break, to your knowledge?

2 A I would think not, no. So it was a little
3 bit of a culmination of, you know, we have
4 concerns for her. You know, she's verbally
5 expressed she's stressed and tired. And
6 falling asleep at your desk is not normal.
7 And, you know, her own admission to me
8 numerous times. So I think just with the
9 whole situation, I don't recall that one
10 person made that decision. I think it was a
11 conversation between my boss and EAP. And
12 her manager was also concerned about what was
13 going on. It's never normally one person
14 that says -- it's kind of like a conversation
15 that then we -- it's kind of a joint.

16 Q Did Victoria express to you that she was
17 stressed over the issue regarding how these
18 provider enrollment applications were to be
19 prepared?

20 A Yes, she did.

21 Q How many times did she express that that was
22 something that was stressing her out?

23 A More than once. I mean, there's a couple of
24 times. Again, you know, she would come to me
25 and, you know, I wanted to continue to

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1 support her through that to say, listen, I
2 understand you have questions and concerns.
3 You know, it's a process we're working
4 through. My advice to her was, again, to
5 follow her directives and not -- you know,
6 she needed to understand that that
7 responsibility wasn't solely on her.

8 Q Can you understand how somebody would be
9 stressed if they felt they were being asked
10 to do something that they believed was
11 illegal?

12 A Yes, I understood why she felt stressed over
13 it.

14 Q Did Victoria indicate anything else regarding
15 her job that caused her to be stressed during
16 these conversations you had with her?

17 A Not that I recall specifically. Just kind of
18 in general. I think she just felt stress
19 with maybe just the whole -- you know, that,
20 I think, was the main thing.

21 Q That being the provider application issue,
22 right?

23 A Yeah. I mean, again, we had numerous
24 conversations. I kind of sat around the
25 corner from her, so she often would stop in

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1 or I would -- how are you, that kind of
2 thing. So I get a sense that she just kind
3 of felt stress in general.

4 Q Did Victoria Johnson indicate that she was
5 having any stress with any of her other
6 co-workers? Let me rephrase the question.

7 Did Victoria Johnson indicate that she
8 was having any problems with any of her
9 co-workers that was contributing to or
10 causing her stress?

11 A I don't remember that.

12 Q During these conversations that you had with
13 her regarding the source of her stress, did
14 she indicate any continuing issues with
15 respect to Mr. Simmons?

16 A No, not that I recall. What I recall is --
17 you know, there weren't any further issues.
18 She may have brought up what happened
19 originally once or twice again after, but
20 nothing new, no new concerns.

21 Q Any conversations you had with Victoria
22 regarding the source or sources of her
23 stress, did she relate to you any issues
24 going on in her personal life with family or
25 relationships that she was involved in or

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1 other things that would have been happening
2 to her outside of work?

3 A I remember her sharing that she had a side
4 job. Don't recall her mentioning a lot of
5 stress around that. I recall her mentioning
6 that her family didn't want her taking these
7 medications. But other than that, no.

8 MS. KAMINSKI: When you get
9 to a place, the food is here.

10 MR. HERRON: I'm always at
11 a place when food is here.

12 (Lunch recess from 12:38 p.m. to 12:46 p.m.)

13 BY MR. HERRON:

14 Q Victoria had indicated to you that she was on
15 some medication, right?

16 A Yes.

17 Q Did you ask her what she was on?

18 A No, I did not.

19 Q Did you ask her why she was on it?

20 A I don't -- the conversation was -- she
21 volunteered that information to me.

22 Q She volunteered to you why she was on
23 medication?

24 A She volunteered that she was on medication
25 and that she was on it because she was

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1 stressed. I did not ask what medication.

2 That's not my business.

3 Q So going back to the mandatory EAP referral
4 that happened at the end of July. Relate to
5 me how that issue of that mandatory referral
6 first was raised.

7 A Well, there had been a couple of instances,
8 other than myself, you know, witnessing her
9 sleeping; her own admission to me that she
10 was under a lot of stress, performance issues
11 at work. She -- if I recall, there was even
12 some e-mails that she had sent saying,
13 listen, I'm on these medications and I'm
14 going to fall asleep once in a while; all
15 concerns to us that there's something going
16 on and we need to offer some help to this
17 employee.

18 Q Did anybody express, at least to you, any
19 suspicions, other than the prescribed
20 medications that she was on, that she was
21 using drugs or using alcohol?

22 A No one expressed that to me.

23 Q But she was referred for drug and alcohol
24 testing?

25 A Part of the standard process.

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1 Q Well, if there was no concerns about her
2 having -- being under the influence of drugs
3 or alcohol, why refer her for drug or alcohol
4 testing?

5 A We didn't refer her specifically for that.
6 She was referred for -- you know, her
7 declining performance, her falling asleep at
8 the desk, her own admission to being drowsy
9 during the day, her own admission to the high
10 stress she was under; lots of struggles that
11 she was having at work, which she was
12 verbalizing to her co-workers, her managers,
13 and me. The drug screen is part of their
14 process. It's not individualized, if that's
15 what you're asking. Everybody that is
16 mandated is put through that, in other words.

17 Q Other than her medications might make her
18 drowsy, did Victoria Johnson ever indicate to
19 you that she felt that she was mentally or
20 physically incapable of performing her job
21 duties?

22 A Not those specific words.

23 Q Well, what words did she use?

24 A I mean, the only thing that I can think of
25 closely is that she, you know, admitted she

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1 was struggling a little bit, you know,
2 because she was on these medications and
3 under stress and that it might impact her
4 ability to do her job. But she did not ever
5 state to me that she had any drug or alcohol
6 problems.

7 Q Did she ever state to you that she had any
8 mental health issues?

9 A No.

10 Q Did she ever indicate to you that anything
11 was stressing her, other than the issue
12 regarding how to complete or what number to
13 use on these provider enrollment
14 applications?

15 A She felt overall stress with her job, not
16 just that. That was one key thing. She was
17 being held accountable for her performance
18 and I think was sensing stress with that,
19 too, overall. So she didn't come to me and
20 say, this is the only thing that's bothering
21 me. It was a general, I'm feeling stressed.

22 Q Did you keep any notes of the conversations
23 regarding the EAP referral?

24 A I don't have any notes personally. Did I
25 take notes? Possibly.

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1 Q Well, if you took notes about those meetings,
2 where would they have been kept?

3 A Just depends. Sometimes I jot notes down. I
4 don't keep them. Sometimes I do. I don't
5 know if I have notes from that. If I have
6 notes that I would have kept, it would have
7 been in an employee relations file that I
8 would have had and that was all left there.

9 Q The notes that were marked as Exhibit 4,
10 where did you keep those before you left?

11 A Probably in my employee relations file.
12 That's a separate file from their employee
13 file. Let's see if there's anything in here.
14 I don't know. There's a form -- the EAP
15 form.

16 Q We'll get to that.

17 A Okay.

18 Q When the issue of the mandatory EAP referral
19 came up, was Steve Riddle a part of that
20 conversation?

21 A Clarify what you mean. With me --

22 Q With you.

23 A -- only?

24 Q Okay. With you.

25 A I honestly don't recall. I'm sure I would

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1 have talked to Sheryl for sure about it
2 because she's her direct manager. I don't
3 recall that I talked to Steve. I possibly --
4 doesn't always go up that high.

5 Q Well, relate to me what you recall discussing
6 with Sheryl Johnson then.

7 A Sheryl was very concerned for Victoria as
8 well. Just felt that, you know, there was --
9 she had concerns over her, you know,
10 performance, her falling asleep at work, her
11 stress, you know, and through this whole
12 process. I don't recall talking to Steve,
13 but that doesn't mean I didn't. Steve
14 doesn't have -- isn't there all the time and
15 doesn't always see what's going on. So it
16 would have -- you know, Sheryl has more
17 intimate relations with Victoria, so I would
18 have definitely talked to Sheryl. Don't know
19 about Steve.

20 Q Did either Sheryl Johnson or Steve Riddle
21 provide you any documentation of any of the
22 performance issues that they claimed that
23 they were having with Victoria?

24 A I reviewed documentation with them. I didn't
25 keep any of it that I recall.

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1 Q What documentation did you review?

2 A They had some documentation that we reviewed
3 with -- you know, kind of reviewing, you
4 know, some of the specific where she wasn't
5 meeting expectations, errors, that type of
6 thing. Maybe complaints. There was a couple
7 of times that there was a lot of other --
8 statements from other co-workers that had to
9 field her calls because she was not answering
10 phones, that type of thing. General
11 performance.

12 Q When was it that you reviewed these
13 documents?

14 A I mean, it was more than once. A few times
15 over the -- over the -- kind of the -- over
16 the months that we were having issues with
17 her.

18 Q Was it in July?

19 A Honestly, I don't remember. I can't tell you
20 dates. I just don't remember. It was more
21 than once.

22 Q Who were the co-workers that had made
23 complaints about Victoria regarding having to
24 field her calls or something like that?

25 A I don't remember names. People that are in

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1 her same position. There's a few of them.

2 Q Is there a quota issue?

3 A I do not know.

4 Q Other than the issue regarding the
5 applications, were any of these performance
6 issues discussed between you and/or Sheryl
7 and/or Steve Riddle in July?

8 A I remember discussing it with them, but I
9 don't remember the date.

10 Q And you don't remember the month; is that
11 correct?

12 A I honestly do not, because it was more than
13 once that we talked about her performance
14 concerns. So it could have been July, it
15 could have been January, could have been
16 February. I don't remember.

17 Q Did you keep any notes of any of those
18 conversations that would help you recollect
19 when they took place?

20 A It just depends on the situation. If it
21 comes to a formal -- like a formal write-up,
22 yeah, we would have that documentation. But
23 if it's just conversation with employees, we
24 don't keep notes.

25 Q When an employee is sent for an EAP referral

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1 or referred to EAP, are they also put on a
2 leave of absence?

3 A The EAP process is a five-day -- the first
4 five days is a paid administrative leave.

5 That's the EAP. That's the --

6 Q Then what happens after those five days?

7 A After the assessment is done, which isn't
8 always in a five-day time frame -- so if it
9 goes beyond the paid five days, they're
10 switched to an unpaid administrative leave,
11 which then they have the option of using PTO,
12 if they have it in their bank, or going
13 unpaid while they're out. And then based on
14 determination, an FMLA could be part of that
15 after or, you know, paralegal, I guess.

16 Q So the paid leave and then the unpaid leave,
17 those are not FMLA leave; is that what you're
18 saying?

19 A Correct.

20 Q Now, my other question was: After the
21 five-day paid administrative leave runs
22 out -- and that's five calendar days or five
23 business days?

24 A Five calendar days, I believe, if I remember
25 the policy.

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1 Q So if the leave begins on a Wednesday or a
2 Thursday, the weekend that follows is
3 considered part of the five days?

4 A They would -- if I remember, they loop that
5 in, because they sometimes might not hear
6 back from a provider, whoever the assessing
7 physician is, if it happened to go over a
8 weekend. So it could extend over a weekend.
9 I don't recall exactly the process. But it's
10 a five paid -- well, and if you think about
11 it, it's a 24/7 operation. So the five days,
12 depending on what the person is scheduled,
13 could fall on different days.

14 Q So is the five-day then five scheduled work
15 days for that employee or five consecutive
16 calendar days?

17 A I don't remember.

18 Q It's probably the better way to phrase it,
19 right?

20 A Yeah.

21 Q So what triggers the transitioning of the
22 paid administrative leave to the unpaid
23 administrative leave?

24 A Just the five days. It's just the standard
25 paid five days. And then after that it goes

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1 unpaid. If it hasn't been, you know, either
2 transitioned into an FMLA or -- because that
3 sometimes happens.

4 Q Is the reason that that sometimes happens
5 because whoever is doing the evaluation of
6 the employee may not get that completed
7 within five days?

8 A That or -- yes. I mean, sometimes it can go
9 beyond five days because it's very
10 individualized. Sometimes then after that,
11 it will transition to an FMLA, just depending
12 on the individual situation, if it's
13 warranted.

14 Q If whoever is conducting the evaluation comes
15 back and says, well, there's nothing wrong
16 with the employee that prevents him or her
17 from doing their job, are they brought back
18 to work? Are they put on an unpaid leave?
19 How does that work?

20 A Once the determination is made -- either
21 they're fit-for-duty or not fit-for-duty --
22 then if they're deemed fit-for-duty, then
23 they're taken off any type of administrative
24 leave based on that process.

25 Q And brought back to work?

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1 A They would come back to work, unless there
2 was like an FMLA initiated or something that
3 would keep them out otherwise.

4 Q Was Victoria ever on FMLA leave?

5 A Yeah.

6 Q When was she on FMLA leave?

7 A I know for sure she was on -- she initiated
8 FMLA herself the day that we initiated the
9 fit-for-duty. She verbalized to me that she
10 was going on an FMLA and she contacted her
11 daughter and then reached back and said that
12 she had contacted her doctor about it. I'm
13 kept in the loop on that process. I don't
14 facilitate it, but they keep HR, so we know
15 how to help with attendance and that type of
16 thing.

17 Q Did you ever see any type of evidence stating
18 that Victoria Johnson was on approved FMLA
19 leave at any point in time?

20 A I don't handle the documentation.

21 Q I know you don't. I'm asking if you remember
22 seeing it.

23 A Kara Ladaika, who is the corporate health
24 FMLA administrator, sends confirmation to us
25 because of the protected information, just

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1 confirming that the person is out on this
2 date under FMLA. I do not handle any or see
3 any of that paperwork.

4 Q And who is the individual?

5 A Kara Ladaika, L-A-D-A-I-K-A.

6 Q And you claim to have seen documentation from
7 Kara Ladaika confirming that Victoria was on
8 FMLA leave?

9 A Yeah.

10 Q Was that an e-mail?

11 A She always e-mails. I remember the -- you
12 know, the process. I remember the -- there
13 was communication around it.

14 Q Did you retain a copy of that e-mail?

15 A I doubt that I would have kept a copy. I may
16 have, but I doubt it. I didn't normally do
17 that. I'm copied as an FYI. She would have
18 all the official records.

19 Q Do you recall when that e-mail was dated?

20 A No.

21 Q Do you recall what month?

22 A Again, I don't remember exact dates of when
23 she went out on fit-for-duty and then, again,
24 it ended up being the FMLA on her own
25 initiation, so it would have been at that

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1 same time. I'm guessing end of July, early
2 August. I don't remember. I'm not good with
3 dates. Sorry.

4 Q In your office, did you retain any type of
5 record or have access to any type of record
6 that indicates the dates that employees are
7 in working or when they're off and why
8 they're off?

9 A Do you mean like payroll records?

10 Q Maybe payroll records or any type of record
11 that -- let me back up then here.

12 Victoria, was she a salaried employee
13 or an hourly employee?

14 A I believe she was hourly.

15 Q So you have to retain records indicating the
16 dates that she works and doesn't work,
17 correct?

18 A The payroll system is Kronos and that's
19 where -- that's where they house all the
20 timekeeping. That is --

21 Q Would -- go ahead.

22 A I was just going to say, just to help you
23 understand the process, you know, they will
24 use payroll records sometimes, too, just to
25 rectify FMLA hours.

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1 Q Is there a record that would be retained that
2 would indicate when an hourly employee like
3 Victoria, what days she works, what days she
4 doesn't work? Monday, worked; Tuesday,
5 worked; Wednesday, off.

6 A Yeah, the payroll system -- most hourly
7 employees -- and I won't say a hundred
8 percent of them -- have to swipe in and out,
9 like a time stamp, on their computer. But I
10 a hundred percent don't know for sure, but I
11 would guess that she has to swipe in and out.
12 Then when they go out on some sort of leave,
13 their timekeeper puts in those hours for them
14 indicating whether it's FMLA leave,
15 administrative leave, that type of thing.

16 Q And this is called what, Kronos?

17 A Kronos, yes.

18 Q Did you ever see any Kronos records for
19 Victoria Johnson indicating that she was on
20 FMLA leave at any time?

21 A No. I would never --

22 Q Do you have access to the Kronos records?

23 A I would not have access to her Kronos
24 records, that I'm aware of. If I have
25 access, I don't know about it.

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1 Q Now, when an employee takes FMLA leave, how
2 in the loop are you kept regarding an
3 employee's request for FMLA leave and whether
4 it's granted or denied? How in the loop were
5 you kept about those matters?

6 A Yeah. Kara keeps HR in the loop so that
7 we -- we can help if there's issues with
8 attendance, or just FYI this person that
9 falls under you is out on leave. The
10 requests don't go through me. Sometimes
11 people share that they're going out, having a
12 child or something like that, it's obvious,
13 we know they're going out. An employee can
14 initiate it and I would never know. Kara's
15 group department facilitates it and then
16 keeps us informed as of the dates.

17 If the documentation is submitted, if
18 there's times when they're not getting a
19 response sometimes, Kara might say, hey,
20 listen, I have been trying to get ahold of
21 this employee, have you or the manager heard
22 from them. Just to make sure that all the
23 appropriate documentation is submitted, that
24 type of thing. I work with the manager to
25 help notify the employee if we're trying to

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1 get ahold of them and, you know, if we
2 haven't heard back from them. Sometime I'll
3 intervene as the HR person to support that
4 conversation to say, listen, we haven't heard
5 from you, when are you coming back, that type
6 of thing. That's my role.

7 Q When an employee applies a request for FMLA
8 leave, there are requirements that must be
9 followed --

10 A Yes.

11 Q -- by the employer, right? And one of those
12 requirements would be for the employer to
13 notify the employee whether or not he or she
14 is eligible for FMLA leave, right?

15 A That it's been approved.

16 Q Well, my question is not whether or not it's
17 been approved. Not all employees are
18 eligible for FMLA leave; you understand that,
19 right?

20 A Yes. Based on working hours and have they
21 been there a year and those guidelines, yes.

22 Q Or have they used up their --

23 A 480 hours.

24 Q -- 480 hours or 12-week allotment?

25 A Yes.

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1 Q And the employer has to notify an employee,
2 who asks for FMLA leave, whether or not
3 they're eligible, correct?

4 A That notification -- yes. And that
5 notification comes from corporate health.

6 Q Are you copied on that communication?

7 A I am.

8 Q Did you ever receive any documentation from
9 Kara or anybody else in her department
10 confirming whether or not Victoria Johnson
11 was eligible for FMLA leave with respect to
12 any requests for it she made?

13 A I don't remember the exact wording. I recall
14 that she was out on FMLA. At a certain
15 point, it changed. My recollection is that
16 she had a change in physician and then after
17 that, they needed new documentation from that
18 new physician to continue it. And my
19 recollection is that up until that point, it
20 was covered. And from that point forward, it
21 was not approved because the documentation
22 was not submitted.

23 Q Did you see any documentation from Kara
24 Ladaika, or anyone in her department, to
25 Victoria and copied to you stating whether or

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1 not she was eligible for FMLA leave?

2 A If she wasn't eligible -- I don't know why
3 she wouldn't have been eligible, I guess, is
4 my response back. She would have been
5 eligible. I don't believe there was any
6 reason why she wouldn't have been.

7 Q My question was: Did you see any
8 documentation --

9 A I wouldn't.

10 0 -- to her stating that she was eligible --

11 MR. BULEA: Let him finish
12 the question and then answer. That will be
13 easier for everyone.

14 A Sorry. Go ahead.

15 Q Were you copied on any documentation to
16 Victoria Johnson which told her that she was
17 eligible or ineligible for FMLA leave?

18 A I would have been copied if she was not
19 eligible for whatever reason. My
20 recollection is that she was out on an
21 approved FMLA. I don't recall the exact
22 document that I would have been copied on.

23 Q Do you specifically recall being copied on
24 any document to Victoria Johnson stating that
25 she was eligible for FMLA leave?

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1 A I don't remember.

2 Q Do you recall being copied on any document to
3 Victoria Johnson stating that she was
4 approved for FMLA leave?

5 A I remember being copied on the
6 correspondence. I remember being copied when
7 she wasn't -- when it was denied with the new
8 physician change. I don't really remember
9 prior to that because I think she was and
10 then she wasn't. So my recollection is I
11 must have been, but I just don't remember. I
12 do remember, though, when she was denied.

13 Q Do you recall seeing any documentation that
14 stated anything regarding any
15 responsibilities that Victoria Johnson had
16 regarding -- well, strike that for a second.

17 Do you recall seeing any documentation
18 stating when Victoria Johnson was expected to
19 return from FMLA leave?

20 A Yes. So when she was -- you know, when her
21 FMLA request was denied, when she changed
22 physicians, she then had been out on an
23 unprotected -- just unprotected time off,
24 because it didn't fall under FMLA, she wasn't
25 on administrative leave. It was just unpaid

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1 time off. I actually would have drafted a
2 letter and sent it to her that said, you
3 know, you are out on -- you are basically out
4 on an unprotected leave, so the expectation
5 is that you'll return to work. If I recall,
6 it was in August. I don't remember dates
7 exactly. So, yeah.

8 Q Do you recall being copied on any
9 documentation to Victoria Johnson telling her
10 how many hours of leave she had available to
11 her under the FMLA?

12 A I don't remember.

13 Q Do you recall being copied on any
14 documentation to Victoria telling her that
15 her leave would be counted against her annual
16 FMLA leave entitlement?

17 A I don't remember specifically.

18 Q Did Victoria have any -- at this timeframe,
19 at least -- right for paid leave, to take a
20 paid leave of absence?

21 A She would have had a right if it would have
22 been a qualifying reason, sure.

23 Q Is there a paid leave of absence option
24 available to employees who are in
25 Victoria's -- employees like Victoria, in her

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1 position?

2 A So there are leave options, several of them.

3 The only time it was paid mandatory was that
4 five days, you know, where the hospital -- or
5 actually, the department paid her, those
6 first five days for the fit-for-duty. Beyond
7 that, it's not -- we don't -- there is no
8 leave that the hospital pays during that
9 time. She would pay herself using her PTO
10 bank. But there are options for approved
11 leaves based on whatever the situation was.

12 There's the personal leave, there's the FMLA,
13 military leave, education leave. So there
14 are opportunities out there.

15 Q Is there paid vacation leave?

16 A PTO is their vacation time. Paid time off is
17 their --

18 Q What can you take PTO days for?

19 A PTO is just your bank. It encompasses
20 vacation, sick, holiday, personal. And it
21 all has to be approved through your
22 leadership based on operational needs.

23 Q How many PTO days per year or per rolling
24 12-month period would Victoria have?

25 A Yeah, that I don't recall. It's based on

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1 your position. You know, there's certain --
2 positions get a certain amount, you know,
3 exempt people get a little bit more, that
4 kind of thing. I don't recall exactly how
5 much she would have.

6 Q But she would have some amount of PTO leave
7 on an annual basis?

8 A Yeah. I think she could even bank probably
9 up to a couple hundred hours.

10 Q Do you recall being copied on any
11 documentation to Victoria Johnson stating
12 that her PTO leave would be applied towards
13 FMLA?

14 A I don't know what PTO leave is. PTO leave
15 is --

16 Q Paid time.

17 A Her paid time off?

18 Q Right.

19 A Yeah, so there's a policy that if you have
20 PTO in your bank, hours in your bank, you
21 have to use them if you're out on a leave.

22 Q On an FMLA leave?

23 A Yes.

24 Q Were you copied on any correspondence or
25 documentation to Victoria Johnson telling her

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1 that, that any PTO leave that she had
2 available would be applied to her FMLA leave?

3 A I don't remember. You know, there's a lot of
4 correspondence that goes out from that group
5 that I'm copied on. I don't recollect
6 specifically her documents.

7 Q Did Victoria Johnson have health insurance
8 benefits through UHPS?

9 A I don't know a hundred percent sure. You
10 know, she -- I don't know. She had the
11 option of having them. I don't know if she
12 chose them.

13 Q Do you recall being copied on any
14 correspondence or communication to Victoria
15 stating that any requirements -- referencing
16 any requirements she had regarding making any
17 premium payments for her health insurance,
18 assuming she had it, and any consequences of
19 her failing to do so while she was on FMLA
20 leave?

21 A I don't remember being copied on anything.

22 Q Are these the types of communications that
23 you would be copied on as part of being kept
24 in the loop regarding FMLA leave for an
25 employee --

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1 A They normally don't copy me or HR people on
2 the premium benefit stuff. I do know that if
3 you're out and you don't have a paycheck for
4 them to collect their portion of it, they do
5 require employees to pay it separately, but I
6 wouldn't be copied on it, more than likely.

7 Q Well, what typically would you be copied on
8 then?

9 A The FMLA -- normally, I am copied on the FMLA
10 correspondence to the employee that Kara
11 sends out.

12 Q You don't recall receiving any correspondence
13 from Kara -- being copied on such
14 correspondence from Kara for Victoria
15 Johnson?

16 A I'm saying I more than likely was. And the
17 process is I would have been. I just can't
18 tell you -- I get copied on all of them. You
19 know, 4,000 employees. So I'm sure that I
20 was. I just don't recall exactly seeing it.

21 - - - - -

22 (Plaintiff's Exhibit No. 5 was marked.)

23 - - - - -

24 Q This is Exhibit 5 for you. Handing you what
25 we have marked as Exhibit 5, which is a

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1 two-page document. Have you seen this
2 document before today?

3 A Oh, yeah. I would have seen this when I
4 worked there.

5 Q Some of the handwriting on the first page, do
6 you know whose handwriting that is?

7 A Yeah. That's mine.

8 Q Can you describe for us what Exhibit 5 is,
9 please?

10 A This actually is a draft that comes from the
11 EAP department. So Jill Fulton -- you see I
12 have the name, Jill, there. So this is just
13 their document of their process, the protocol
14 for tier one, which we would have reviewed at
15 the time we were deciding whether or not to
16 refer her.

17 Q On the first bullet point it says, manager to
18 make contact with HR/EAP to initiate FFD
19 process.

20 You see that, right?

21 A Right.

22 Q In Victoria Johnson's case, who would the
23 manager have been?

24 A It would have been me.

25 Q So you made contact with the HR/EAP to

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1 initiate the FFD process, right?

2 A Correct.

3 Q Do you recall what date that was that you
4 made contact?

5 A I do not exactly recall that date.

6 Q Would it have been before or after the
7 conference call that you and Carole Meisler
8 had with the supervisor from CGS?

9 A I don't remember. Two separate things. Do
10 not recall.

11 Q So you don't recall what the sequence was
12 between the two?

13 A No, I do not.

14 Q Before that conference call took place, do
15 you recall having any discussions with either
16 Sheryl Johnson or Steve Riddle regarding
17 whether or not Victoria should be referred
18 for a mandatory EAP fitness-for-duty
19 evaluation?

20 A Clarify that question again.

21 Q Yes. Going back again to the conference call
22 that you sat in on between Carole Meisler and
23 the supervisor from CGS who you don't recall.

24 A Okay.

25 Q I know you don't recall the date of that

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1 conversation.

2 A I don't.

3 Q But do you recall there being any discussions
4 prior to that conversation, prior to that
5 conference call, with Steve Riddle or Sheryl
6 Johnson or anybody else regarding whether
7 Victoria Johnson should be sent for a
8 mandatory EAP fitness-for-duty evaluation?

9 A I mean, it's possible. I just don't
10 remember. I mean, it's two totally separate
11 things, so I don't recall, like, what
12 happened first or if there were conversations
13 before. Definitely concern about how she was
14 doing, how she was --

15 Q Now you're referring to this as two separate
16 things. This was all occurring around the
17 same time, right?

18 A Sure, all was occurring around the same time.
19 But our concern for her performance and
20 falling asleep is separate than the call to
21 the -- CGS. So I'm not -- you know what I
22 mean? I'm not recalling what happened first.

23 Q But the referral to the EAP all was a result
24 of the stress that Victoria was claiming to
25 be experiencing, right?

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1 A Yeah.

2 Q And one of the major sources of her stress,
3 as she expressed it and as you understood it,
4 was this issue about how to prepare these
5 applications?

6 A She was stressed about that, yes.

7 Q So there was a connection between the
8 applications issue and the EAP referral,
9 correct?

10 A There was -- her reaction to that, yes.

11 Q She was stressed because --

12 A She was having a hard time understanding the
13 directives.

14 Q She was stressed because she felt she was
15 being asked to do something illegal, right?

16 A Yes. Even though we assured her numerous
17 times it wasn't.

18 Q I understand that. She felt she was being
19 told to do something illegal?

20 A Yes. She was very stressed, yes.

21 Q And that stress was one of the reasons that
22 she was referred to, maybe one of the main
23 reasons she was referred to the EAP?

24 A Yes.

25 Q So there was a connection between the two,

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1 correct?

2 A If you -- yeah. I mean, if that's how you're
3 going to look at it.

4 - - - - -

5 (Plaintiff's Exhibit No. 6 was marked.)

6 - - - - -

7 Q We're handing you what we've marked as
8 Exhibit 6.

9 A Okay.

10 Q Have you seen this document prior to today?

11 A Yeah. This is the -- this would be the EAP
12 referral form.

13 Q And the date is?

14 A July 25.

15 Q Of 2012, correct?

16 (Mr. Bulea exited the deposition suite.)

17 A Yes.

18 Q Whose handwriting is that at the top?

19 A That is Sheryl's. Sheryl Johnson.

20 Q And the reference is for a tier one mandatory
21 referral, correct?

22 A Uh-huh.

23 Q Yes?

24 A Yes.

25 Q I told you you would do it once.

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1 A Yes. Thank you.

2 Q And the referral is not for suspicion of drug
3 or alcohol use, correct?

4 A Correct. I mean, we knew she was on
5 prescribed medications by her own admission.

6 Q And the referral is not because Victoria was
7 engaging in any type of violent, hostile, or
8 reckless behavior endangering the safety of
9 others, right?

10 A Right.

11 Q It was not a tier two mandatory referral,
12 correct?

13 A Yeah. Looks like it was tier one.

14 Q Right. And for a tier two, there's no
15 reference to this being because of attendance
16 issues, right?

17 A Right, she didn't have attendance issues.

18 Q No indication that this referral was because
19 of what's called a conflictive work
20 relationship, correct?

21 A Right.

22 Q And no indication in here that this was
23 because of deteriorating job performance,
24 correct?

25 A No indication on here, right.

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1 Q And referrals can be made for more than one
2 reason, correct?

3 A Yes, definitely.

4 Q So if part of the reason for a referral would
5 be that Victoria Johnson was having a
6 conflictive work relationship with either of
7 her superiors, that box could have been
8 checked off, correct?

9 A Yeah.

10 Q And if there was concerns about Victoria's
11 job performance deteriorating, that box could
12 have been checked off, correct?

13 A Could have been, yes.

14 Q And none of those boxes were checked off,
15 correct?

16 A Yeah.

17 Q I think we agreed that the date of this is
18 July 25 of 2012, correct?

19 A Uh-huh.

20 Q Right?

21 A Yes.

22 Q Now, after this form is completed, to whom
23 would it have been submitted?

24 A It would have been submitted to the EAP
25 manager, which is Jill Fulton. And then she

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1 assigns one of her -- either her or one of
2 her counselors to it.

3 Q Now, would you have been provided with a copy
4 of the EAP referral?

5 A It's possible.

6 Q Would you have at least been verbally
7 notified of the EAP referral?

8 A Oh, yeah. I would have been part of that for
9 sure.

10 Q Once the EAP referral then is sent on to --
11 and I forget whose name you mentioned.

12 A Jill.

13 Q Fulton, right?

14 A Uh-huh.

15 Q Yes?

16 A Yes. Jill Fulton.

17 Q What happens at that point once the report is
18 forwarded to Jill Fulton and to her staff?

19 A They use the form, along with any -- part of
20 their process is they require the manager to
21 submit in writing to them all of the
22 historical reasons why or what's been going
23 on recently that they feel that they need to
24 refer this person, which we would have had a
25 conversation about it, but then the

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1 requirement is to send it in writing to -- so
2 that they have all the information they need
3 as they're assessing this employee.

4 Q Then what happens?

5 A Then in a mandatory situation, an appointment
6 would already be predetermined. So Jill
7 would look at the calendars, figure out who
8 has time -- because it's clearly an immediate
9 need if we're mandating somebody. It's
10 somebody they want to get on the calendar
11 within a day. An appointment is determined
12 and then the employee is notified with the
13 manager and then sent to the fit-for-duty.
14 So they have all this information.

15 Q What role do you play in all of this? What's
16 your function?

17 A Just kind of the HR mediator, just kind of
18 helps facilitate, so I -- you know, I work
19 with the manager to bring it to EAP's
20 attention. So the HR function is -- you
21 know, if we determine that there's concerns
22 for any reason, we loop in the EAP manager,
23 talk with them, get their professional
24 assessment, determine whether it's
25 fit-for-duty, and then meet with the

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1 employee. Most times I meet with the manager
2 and the employee in these kinds of
3 situations.

4 Q Together --

5 A Yeah.

6 Q -- or separately?

7 A No, altogether. Like, we would meet with --
8 so in this case, it was Sheryl, myself,
9 Victoria, and I think Steve was in the
10 room -- I can't remember a hundred percent
11 sure -- when we met with Victoria to talk
12 about this.

13 Q Well, tell me about that meeting.

14 A So we, you know, made the assessment, talked
15 with Jill, determined that based on lots of
16 concerns, that we were going to send her out
17 for a mandatory. We brought her in, talked
18 with her, she immediately got very upset. It
19 was in my office. She stormed out of my
20 office. She wasn't very happy, which, you
21 know, I understand why. So she wasn't real
22 open to it.

23 Q Did you tell her what the concerns were --

24 A Yes.

25 Q -- that resulted in you taking this action?

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1 A Yes.

2 Q What did you tell her?

3 A We told her that the reasons were, you know,
4 the falling asleep, her admitted -- you know,
5 again, I woke her up myself. Her admitted
6 stress, you know, stating that she's on these
7 medications. She had sent e-mails even
8 saying that, you know, she was going to be
9 falling asleep at inappropriate times. All
10 of these things. We were explaining why we
11 felt the need that we wanted to help her.

12 But honestly, you know, she wasn't very open
13 to hearing the conversation. I don't really
14 know what she heard. She didn't stay in my
15 office very long.

16 Q Did you tell her that she was going to have
17 to undergo a drug and alcohol screening?

18 A Possibly. I mean, I -- like I said, the
19 conversation was brief. I don't remember
20 what we got to. I think I would have told
21 her that. If I got -- you know, if it got to
22 the point where I was able to share that with
23 her. I mean, I would explain the whole
24 process if I needed to. I tried to talk to
25 her.

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1 - - - -

2 (Plaintiff's Exhibit No. 7 was marked.)

3 - - - -

4 Q Handing you what we have marked as
5 Plaintiff's Exhibit 7. Take a moment to flip
6 through those, please.

7 A Okay.

8 Q Have you seen these documents prior to today?

9 A Yeah. I would have drafted this letter.

10 Q And you would have sent this letter to
11 Victoria, correct?

12 A Yep.

13 Q Did you provide this letter to Victoria at
14 the meeting or was it sent afterwards?

15 A This would have been sent after, I believe,
16 because she stormed out of the building. So
17 when I mentioned that she left my office, I
18 went over to her area. I followed her and I
19 said, talk to me. If you storm out and don't
20 follow the mandate, you could risk -- this
21 could risk your job. You know, this is a
22 condition of employment. And so I tried to
23 talk to her and she left. Told me she was
24 going out on FMLA leave and she left.

25 Q Did you have this ready to give to her at the

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1 meeting, Exhibit 7?

2 A I don't know.

3 Q So this was --

4 A I don't think. Hang on. Let me look at it.

5 So I think I probably would have drafted this
6 after, because she left. So we were giving
7 her 24 hours to consider and come back. So
8 that's what this letter is from.

9 Q Well, the meeting that she stormed out of --
10 and certainly not disputing that she stormed
11 out of it -- was she given anything stating
12 the date and time of this fit-for-duty
13 referral?

14 A This is the second appointment. We had to
15 change the first one because she wouldn't go
16 to it.

17 Q Well, when was the first one set for?

18 A Probably would have been that afternoon. I
19 don't remember exactly.

20 Q The 26th?

21 A So we met with her on -- yeah, I don't
22 remember exactly what time the appointment
23 was, but normally we try to schedule it
24 right -- you know, either right then or
25 whatever. So, say, maybe it was at 1:00. I

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1 don't remember exactly the date. But that
2 she refused to go to, so we had to schedule a
3 second appointment, and that's what this was.

4 Q And she went to that appointment?

5 A She did.

6 Q She did go to that appointment. So did you
7 have something to give to her during the
8 meeting at 10:30 in the morning on July 26
9 telling her where to go for whatever had been
10 scheduled for that same day?

11 A Yes.

12 Q Was a copy of this map included with the
13 letter that's on the second page of Exhibit
14 7?

15 A I'm sure. We always gave a map when we sent
16 someone for EAP, just to make sure that they
17 knew where they were going on the campus.

18 Q In fact, the letter says kind of in the
19 middle in bold print, see enclosed documents.
20 Which includes the map, right?

21 A There you go, yeah.

22 Q What were the other enclosed documents other
23 than the map?

24 A The employee assistance policy.

25 Q That's what has the Bates stamp number 1010

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1 through 1013 at the bottom?

2 A Yeah. And then the -- 14 and 15 are the --
3 yeah, so 15 gives all the clarification on
4 the appointment.

5 Q And 14 is a blank copy of the referral,
6 right?

7 A It's part of the policy, yeah.

8 Q The policy that was provided to Victoria with
9 this letter, the parts on like page 1011,
10 1012, were they highlighted --

11 A Uh-huh.

12 Q -- as they were sent to her?

13 A Yeah.

14 Q What was the result of the fitness-for-duty
15 evaluation?

16 A My recollection is it was extended beyond the
17 five days, but at the same time she went out
18 on FMLA. So she was out on a protected leave
19 under FMLA is my recollection.

20 - - - - -

21 (Plaintiff's Exhibit No. 8 was marked.)

22 - - - - -

23 Q Exhibit 8, have you seen this document before
24 today?

25 A Yeah. I signed it.

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1 Q Can you identify it for us, please?

2 A Let's see. Looks like a follow-up. Thanks
3 for complying. So then -- so because she
4 complied, then she falls within the
5 five-day -- and it was just a notification
6 that she's under the five-day paid leave then
7 based on the policy, because she went and
8 she's complying.

9 Q There's no reference to the FMLA in this
10 letter, is there?

11 A No. This is just notifying her about the
12 leave -- I'm sorry, about the five -- the
13 paid portion. Because I had told her before
14 that she was on unpaid and now this flipped
15 to paid because she was complying.

16 Q Well, what was determined at the
17 fitness-for-duty evaluation? What
18 determinations were made by those who
19 conducted it?

20 A They don't share specifics. They just tell
21 us whether the person is deemed fit-for-duty
22 or not fit-for-duty. She was never deemed
23 not fit-for-duty that I recall.

24 Q Was she sent for a psychological or
25 psychiatric evaluation?

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1 A I don't know.

2 Q Do they communicate those types of things to
3 you?

4 A No, they don't share that specific stuff with
5 us. Again, they just share that they're
6 going through the process. I mean, I do know
7 that there's -- that there's things that they
8 do, but that's just basic knowledge from me.

9 That's not what they share with me. Like,
10 they don't tell me specifically we sent this
11 person out for this and this person out for
12 this. The only thing that's communicated
13 with us is whether -- you know, are they
14 released, what the dates are, and if they're
15 fit or not.

16 Q Were you aware or ever made aware that
17 Ms. Johnson was directed to see a gentleman
18 by the name of Dr. Pallas?

19 A I don't remember that.

20 Q And you were told that Victoria was referred
21 for the drug and alcohol screening right?

22 A I know that's part of the process, yes.
23 That's everybody's --

24 Q Were you ever told the results of that
25 screening?

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1 A No.

2 Q If an employee, who has to go through the
3 drug and alcohol screening as a mandatory
4 part of this process, fails that testing, are
5 you informed of that?

6 A Well, they would inform us that they weren't
7 fit-for-duty for whatever reason and then
8 that would transition into something else
9 more than likely, like a treatment or
10 something through the FMLA. But I wouldn't
11 know specifics, no.

12 Q So if a person was determined to be not fit,
13 they wouldn't tell you why they're not fit?

14 A Yeah, they don't share the specifics. It's
15 all very protected.

16 - - - - -

17 (Plaintiff's Exhibit No. 9 was marked.)

18 - - - - -

19 Q Exhibit 9, have you seen this before today?

20 A Yeah. So Kathy works for Jill Fulton. She's
21 one of their certified counselors.

22 Q And there's a reference to, as soon as I get
23 new information, I will let you know.

24 Do you see that?

25 A Yep.

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1 Q What new information was it, your
2 understanding, that Kathy Springer was
3 referring to?

4 A They just keep us in the loop to let us know
5 that, yes, the person came to their
6 appointment or not, because we wouldn't know
7 unless somebody told us. And that they'll
8 follow up with -- once the five days -- you
9 know, where we're at then. Information --
10 again, when she's saying information, it's
11 dates. It's the process. It's got nothing
12 to do with anything specific.

13 - - - - -

14 (Plaintiff's Exhibit No. 10 was marked.)

15 - - - - -

16 Q Handing you what we've marked as Exhibit 10.
17 This is a report from Dr. Pallas. Have you
18 ever seen this before today?

19 A Never.

20 Q Was there at any point -- when all of these
21 issues were being discussed regarding the
22 manner in which these Medicare applications
23 were to be completed, did the issue ever come
24 up regarding whether or not Victoria Johnson
25 should be transferred to another position?

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1 A She brought it up. She a couple of times
2 brought up to me that she would like to
3 transfer to a different role, which we were,
4 you know, supportive if she wanted to
5 transfer. I even connected her, I believe if
6 I recall, with the recruiter, if I remember.
7 You know, there's always that option. I
8 mean, we would certainly not want to hold
9 someone in a position they don't want to be
10 in.

11 Q I am going to skip ahead to the meeting in
12 October, which we are going to talk about a
13 little bit more.

14 A Okay.

15 Q But was that issue of transferring Victoria
16 to a different position where she didn't have
17 to deal with these Medicare provider
18 enrollment applications, did that issue ever
19 come up during that meeting in October with
20 Victoria?

21 A Remind me what that meeting was.

22 Q The one where she ended up being fired right
23 afterwards.

24 A October?

25 Q October. Did you have a meeting with

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1 Victoria Johnson in October where her return
2 to work was discussed?

3 A I'm sorry. I'm still thinking in August.

4 Q I told you I was skipping ahead. You had a
5 meeting with Victoria in October?

6 A Yes. The day she was to come back to work,
7 yes.

8 Q Was the issue of transferring her to another
9 position where she wouldn't have to deal with
10 these issues regarding these Medicare
11 applications and how they were to be
12 prepared --

13 A During that meeting?

14 Q Yes. During that meeting, was there any
15 discussion regarding transferring her to
16 another position, giving her that option?

17 A I don't recall if that came up during the
18 meeting. I don't remember that.

19 Q Were you ever made aware at any point that
20 Dr. Pallas had suggested that that might be a
21 reasonable way of dealing with the stress
22 that Victoria was experiencing because of the
23 issues about how those applications were
24 provided?

25 A No, I am not aware of any of that.

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1 - - - -

2 (Plaintiff's Exhibit No. 11 was marked.)

3 - - - -

4 Q Handing you what we have marked as Exhibit
5 11. Have you seen this before today?

6 A Yeah, this would -- this is again
7 notification -- just notification per policy
8 that the five days then transitions to an
9 unpaid leave. And then it does mention about
10 the paid time off and the bank, so I did
11 mention that to her.

12 Q There's no reference to the Family Medical
13 Leave Act or any FMLA leave in this, correct?

14 A No. This is just notifying her that her paid
15 leave flipped to administrative -- unpaid.

16 Sorry. Unpaid administrative.

17 Q There's a reference in here that you would
18 contact Victoria once her return to work
19 status is determined, correct?

20 A Yeah, based on whether -- you know. Whether
21 it's the, you know, leave she's on here or
22 FMLA. Again, it was all running
23 consecutively.

24 Q Well, who was going to determine Victoria's
25 return to work status?

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1 A Based on which leave?

2 Q Well, there's no reference to FMLA leave in
3 this letter, correct? The only reference is
4 to unpaid administrative leave, right?

5 A This is just referencing about the leave
6 switching.

7 Q And unpaid administrative leave was a
8 decision made by UHPS?

9 A Because she was still -- so remember, it's
10 running consecutively. So she's out on
11 fit-for-duty, that switches from a five days
12 paid to an unpaid. And we had not been
13 notified by the fit-for-duty staff that she
14 was released or fit-for-duty or not
15 fit-for-duty yet. So I'm just following the
16 process, notifying her that it switches.

17 Q Is it your claim, as we sit here today, that
18 as of August 14, 2012, nobody over in the EAP
19 program had notified you that Victoria was
20 fit to return to duty as of that date?

21 A That would -- based on this letter, that
22 would sound accurate. That as of August 8,
23 she was still technically on both, running
24 consecutively.

25 Q Now, when an employee is on FMLA leave, the

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1 return to work date is determined by his or
2 her doctor, and they're expected to return on
3 that date, correct?

4 A Correct.

5 Q UH does not determine what the return to work
6 date is going to be, correct?

7 A It's based on the physician documentation,
8 right.

9 Q But for the unpaid administrative leave
10 that's referenced in Exhibit 11, UH makes the
11 determination as to when the employee is
12 going to return to work, correct?

13 A The determination is based off of the
14 evaluation, so I'm not really sure what you
15 mean.

16 Q But somebody at UH is going to look at that
17 information and determine whether or not that
18 employee should return to work, correct?

19 A Then they would notify HR to say the
20 evaluation is complete, she's been deemed or
21 he's been deemed fit-for-duty or not
22 fit-for-duty. And then from there it goes --
23 depending on the situation.

24 Q If you look back at Dr. Pallas's report -- I
25 know you haven't seen it before today.

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1 A No.

2 Q But if you look on the third page in the
3 section entitled conclusion, Dr. Pallas
4 states and makes his -- I guess you can call
5 it a diagnosis, that I do not believe that
6 Ms. Johnson is suffering from any Axis I
7 psychiatric condition that would impair her
8 ability to work in general.

9 Had anybody informed you that a doctor
10 had said that she was not impaired in her
11 ability to return to work?

12 A I was never told that she was not
13 fit-for-duty.

14 Q But you were never told that a doctor had
15 specifically stated that she was not
16 impaired, correct?

17 A Yes.

18 Q Was there any medical diagnosis that you were
19 aware of, as of August 14, 2012, stating that
20 Victoria Johnson was not fit to return to
21 work?

22 A No medical documentation, no.

23 Q Did you have any other communication
24 either -- I don't care if it was by e-mail,
25 if it was by phone, or correspondence that

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1 you would have sent.

2 Did you have any other communication
3 with Ms. Johnson between the time when you
4 met with her and she stormed out of your
5 office and August 14 of 2012 when you sent
6 Exhibit 11 to her?

7 A I don't recall. I remember speaking with her
8 after she left to confirm that she was
9 planning on going to the second appointment
10 that we made.

11 Q Where did that conversation take place?

12 A It would have probably been in my office. I
13 don't remember. You know, I don't remember
14 exactly, but I'm sure that I would have
15 spoken with her because I would have had to
16 have told her when the new appointment was.
17 I don't remember specifically.

18 Q So after she stormed out of your office on
19 that date, she came back?

20 A No, I would have called her.

21 Q So it would not have taken place in your
22 office?

23 A I would have been in my office on the phone
24 is what I meant.

25 Q So it wasn't a face-to-face conversation?

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1 A Oh, no.

2 Q You called her or she called you?

3 A I would have probably called her to say,
4 listen, you know, reconsider, new appointment
5 made. I just don't remember exactly, but I
6 would have called her. I definitely didn't
7 see her again.

8 Q When would have been the next time you would
9 have communicated or attempted to communicate
10 with Victoria after August 14 of 2012?

11 A I guess just based on the processes -- I
12 don't know when I would have. I would be
13 waiting to get notification from Kara Ladaika
14 and/or EAP on whether she was released to
15 come back based on provider information, you
16 know, documentation. If she's out, she's
17 out. I don't contact her until I'm told that
18 she's ready to come back and then we just
19 confirm that she knows the date that she's
20 coming back and what her schedule is. That's
21 the normal process.

22 MR. HERRON: We're at a
23 good point for taking a five-minute break.

24 (Recess from 1:54 p.m. to 2:06 p.m.)

25 - - - - -

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1 (Record read.)

2 - - - -

3 BY MR. HERRON:

4 Q So when was your next contact with her?

5 A I don't recall honestly.

6 Q So after October 14, did you receive any or
7 have any communication with Kara or anyone
8 else in her department regarding Ms. Johnson
9 being on FMLA leave?

10 A I remember that she was out on FMLA and then
11 I remember communication from Kara that
12 indicated she had changed physicians because
13 I think -- I mean, my assumption is that they
14 didn't get -- you know, they were reaching
15 out to the physician she was originally with
16 to find out what the status was. We found
17 out she wasn't with that physician anymore.
18 So they requested new documentation from her
19 to continue the leave. I remembered that
20 communication. Don't remember dates or
21 exactly what it said. Requesting new
22 certification from her.

23 Q And did any of that communication come from
24 you -- did any of the communication to
25 Victoria, that is, come from you?

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1 A It would have come from Kara, anything
2 official on her FMLA, yes.

3 Q While she was out, was Victoria ever taken
4 off of the unpaid administrative leave?

5 A Not to my recollection. I don't recall. I'm
6 not sure.

7 Q So for the entire time that she remained out
8 until she was terminated, was she considered
9 to be on unpaid administrative leave?

10 A She was on two leaves. She was out
11 originally from the fit-for-duty for the
12 transition to an unpaid. I don't recall when
13 that ended. But consecutively, she was on
14 the FMLA.

15 Q Consecutively or concurrently?

16 A I'm sorry. Concurrently. Sorry.

17 Q Was she ever taken off of the non-FMLA unpaid
18 administrative leave?

19 A I don't remember. Honestly, I don't remember
20 the timeline now.

21 Q And it is University Hospitals personnel that
22 determine when somebody comes off of the
23 unpaid administrative leave, correct?

24 A It would have been determined through the
25 fit-for-duty process when she was deemed

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1 either fit-for-duty or not fit-for-duty,
2 which I just don't recall when that would
3 have ended in -- you know, concurrent with
4 the FMLA. I just mean concurrent with the
5 FMLA, I don't remember when that ended and
6 that continued.

7 Q So the EAP people make the determination as
8 to when the unpaid administrative leave would
9 end, correct?

10 A Yes.

11 Q And they would communicate that to you,
12 correct?

13 A Yes.

14 Q Did they ever communicate to you that the
15 unpaid administrative leave ended at any
16 point?

17 A I don't recall. And, again, sometimes during
18 these processes, there's -- the FMLA kicks in
19 and it kind of blends, so I don't really
20 remember when that ended and the FMLA
21 continued.

22 Q Would they notify you if the unpaid
23 administrative leave was ending and was being
24 converted to an FMLA leave?

25 A In this situation, the FMLA was already in

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1 place, so it wouldn't have converted because
2 she applied for the FMLA the same day.

3 Q But you never received notification that the
4 unpaid administrative leave was being
5 terminated, correct?

6 A I don't remember.

7 Q If that is something that had happened, that
8 is something that in the ordinary course of
9 business would be communicated to you, right?

10 A Yes.

11 Q By either e-mail or letter?

12 A Usually, yeah, I would be part of that
13 communication to say, you know, if
14 fit-for-duty, not fit-for-duty, but a
15 transition -- I shouldn't say transition.
16 She was on an FMLA. So I just don't recall
17 because of the situation of her being on two.
18 I don't remember exactly. Yes, normally, I
19 would be looped in on that.

20 Q If an employee's FMLA ends for whatever
21 reason, can they still be kept on the unpaid
22 administrative leave?

23 A If -- I don't know. I mean, I guess. In
24 certain situations, it could be possible.
25 But that would have had to have been part of

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1 that original -- or if it was a new.

2 Q Original what or new what?

3 A So when she went out on fit-for-duty, it
4 switched to an unpaid leave. Like, what it's
5 considered -- they call it a leave because
6 you're out and you're being put through this
7 evaluation process. Once that evaluation
8 process is completed, that ends. She was
9 concurrently out on an FMLA, which then
10 continued. So once that fit-for-duty is
11 done, that process ends. So, you know, it
12 would have to be a continuation of that, if
13 it -- if her FMLA ended prior to that. It
14 doesn't normally happen that way. It's just
15 two different processes. I know it seems a
16 little confusing.

17 - - - - -

18 (Plaintiff's Exhibit No. 12 was marked.)

19 - - - - -

20 Q Handing you what's been marked as Exhibit 12.

21 Have you seen this before today?

22 A I'm copied on it. It's an e-mail from,
23 again, Kara.

24 Q It's dated Friday July 27 of 2012, correct?

25 A Yes.

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1 Q This e-mail, at least, doesn't state that
2 Victoria Johnson was on FMLA, but it
3 referenced to whether if it proceeds into an
4 FMLA, correct?

5 A Yeah. Probably hadn't been put through the
6 total approval process, because it takes a
7 day or two to get documentation. So you
8 apply for it and then there's documentation
9 you have to get for it to be finally
10 approved. So because it was only a day, she
11 probably didn't have it yet.

12 Q Can we presume from this e-mail that we have
13 marked as Exhibit 12 that as of July 27, 2012
14 at 11:01 a.m., Victoria Johnson was not yet
15 on an FMLA leave? Can we agree on that?

16 A Was not on approved FMLA officially yet,
17 correct.

18 - - - - -

19 (Plaintiff's Exhibit No. 13 was marked.)

20 - - - - -

21 Q Handing you what we have marked as Exhibit
22 13. Have you seen this before today?

23 A Yep.

24 Q Can you identify this for us, please?

25 A So this is a letter that we drafted and sent

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1 notifying Victoria that, you know -- we
2 wanted to clarify an expectation for her to
3 come back to work because she had been out,
4 the approved FMLA had ended because there was
5 documentation that wasn't turned in, from my
6 recollection.

7 Q No reference to FMLA paperwork in this
8 letter, correct?

9 A So it says here, to date, we have not heard
10 from you, nor have you provided the
11 additional documents for certification that
12 we requested.

13 That would be certification for FMLA.
14 Now it doesn't say the word FMLA. But Kara
15 had requested the certification from her, and
16 so based on what we knew, the leave that she
17 was on that was protected ended August 21.
18 There's no -- you know, no more reason for
19 her to be out. She's just out of work on an
20 unpaid.

21 Q Was there a letter sent to Victoria Johnson
22 on August 21?

23 A I don't remember. That's a specific date,
24 so...

25 Q You refer to certified letters having been

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1 returned. Were those certified letters sent
2 by you?

3 A Yes.

4 Q Were the certified letters sent by anybody
5 else other than you?

6 A Kara may have sent some. I don't know.

7 Q Do you know if Kara sent any?

8 A I don't know. I know I sent some. I don't
9 know if anyone else did.

10 Q How many certified letters did you send to
11 Victoria Johnson?

12 A Several. I don't remember how many.

13 Q Were they all returned?

14 A I believe. I don't want to say all. There
15 was a timeframe that they all were, but there
16 were one or two in the beginning that she
17 accepted and maybe one at the end that she
18 accepted.

19 Q What was the timeframe where she was not
20 accepting them?

21 A While she was out. I don't remember the
22 exact dates.

23 Q So that could be July 27 through October 8,
24 correct?

25 A Possibly. I don't know. But I sent them

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1 regular mail as well. Sent them both avenues
2 to try to ensure that she would get one of
3 them.

4 Q If certified mail that you send is not
5 collected, it comes back to you personally,
6 correct?

7 A Yes.

8 Q And you keep a copy of that in the employee
9 file?

10 A I keep notification that it wasn't accepted
11 or, you know, picked up.

12 Q When you send certified mail out, do you have
13 the little green receipt tag postmarked to
14 indicate the date that it was sent?

15 A Yes.

16 Q I noticed that on some of these letters in
17 here that we have marked, 13 -- well, just
18 look for a moment at Exhibit 13.

19 You say that you sent that by
20 certified mail, but you don't have the return
21 receipt number on there, correct?

22 A Yeah. I didn't normally put that in my
23 verbiage of the letter.

24 Q Exhibit 11, you sent by certified mail on
25 August 14, correct?

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1 A Yeah, I guess.

2 Q And there's no reference to this certified
3 receipt number, correct?

4 A Right. I never put that in the letter.

5 Q Why don't you put that in the letter?

6 A Just wasn't my practice.

7 Q You didn't do that on Exhibit 8, correct?

8 A Right, it's not on there.

9 Q You didn't do that on Exhibit 7, correct?

10 A Correct. But I kept the receipts, so -- but
11 didn't document them in the letter.

12 Q How do you track the receipts? When the
13 little green card comes back from the post
14 office --

15 A Well, the whole thing comes back.

16 Q -- how do you know what letter that goes to?

17 A The whole thing comes back if the person
18 doesn't accept it.

19 Q I understand that. But when a person does
20 accept it, you get the green card that's
21 affixed to the back back, correct?

22 A I don't normally send a lot of certified
23 letters, so it's pretty easy to track.

24 Q But when you get the green card back
25 indicating it's been delivered, you don't

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1 know what letter that is because you don't
2 have the return receipt number on the letter,
3 correct?

4 A On this letter?

5 Q Well, on any of the letters that you send.

6 A Like I said, I don't send very many and it's
7 to a certain person and that's how I track
8 it.

9 - - - - -

10 (Plaintiff's Exhibit No. 14 was marked.)

11 - - - - -

12 Q Exhibit 14. Have you seen these documents
13 before today? We have handed you Exhibit 14,
14 which is five --

15 A Right.

16 Q -- pages of documents provided by the
17 hospital's attorneys, Bates stamped 1377
18 through 1381.

19 A Yes.

20 Q Is it your handwriting on all of these
21 documents?

22 A Yes.

23 Q So the first page would be a certified mail
24 receipt for a document sent to V. Johnson,
25 correct?

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1 A Yes.

2 Q You can't tell what date -- that particular
3 page, 1377, is not postmarked, correct?

4 A Right, it's not.

5 Q So you don't know what date that letter was
6 sent?

7 A Right.

8 Q Because you don't put the return receipt
9 number on letters, you don't know which
10 letter that corresponds to, right?

11 A Unless it comes back and I can match it up.

12 By the way, she admitted to me that she
13 wasn't picking up our letters, just so you
14 know.

15 Q We'll look at the second page. Again, we
16 have another letter to Victoria, right?

17 A Right.

18 Q That's your handwriting, right?

19 A Yes.

20 Q When you send these letters out, you keep
21 these receipts, correct?

22 A Yes.

23 Q We don't have a postmark date for this
24 letter, right?

25 A Right.

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1 Q So we don't know what date it was sent,
2 correct?

3 A Right.

4 Q Because, again, if you don't put the return
5 receipt number on the letter, then you don't
6 know which letter this particular receipt
7 corresponds to, right?

8 A Right.

9 Q Same with the receipt on page 1379, correct?

10 A Right. Unless it comes back and I can match
11 it up.

12 Q And the next page, we do have a returned
13 letter, correct?

14 A Yeah.

15 Q What's the postmark date on that letter?

16 A July 27.

17 Q We have a return receipt green card on the
18 last page, correct?

19 A Uh-huh.

20 Q Yes?

21 A Yes.

22 Q There's not a date of delivery on that,
23 correct?

24 A Not that I can see.

25 Q We do have the article number on the card,

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1 correct?

2 A Yes.

3 Q But because, again, you don't put these
4 numbers on the letters, you don't know which
5 letter this return receipt card corresponds
6 to, correct?

7 A Right. Unless I just matched up the dates I
8 sent it.

9 Q In fact, if we look at the last two pages,
10 the return receipt number ends in 2627,
11 right?

12 A Yep.

13 Q So --

14 A So we know what letter that is.

15 Q So we know that's a letter sent on July 27?

16 A Right.

17 Q That was returned unclaimed?

18 A Right.

19 Q We don't know if any of the other letters
20 that you sent certified mail were returned
21 unclaimed, do we?

22 A Not looking at what I'm seeing here.

23 Q I'll tell you that these are the only
24 documents regarding certified mail that were
25 provided to me by the University's attorneys.

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1 When the July 27 letter was returned
2 by the post office undelivered or
3 unclaimed -- unclaimed is maybe more
4 accurate -- where did you keep that? You put
5 it in a file, right?

6 A Yeah. I had a file for her, so I would have
7 kept it in there.

8 Q If other letters had been returned unclaimed,
9 they would have been put into the same file?

10 A They should have been, yes.

11 Q When you left in December of this year, what
12 did you do with those files?

13 A All of my employee relations stuff was just
14 kept in a cabinet. There's a drawer. So it
15 would have been left there with all the other
16 stuff.

17 Q Were you asked by anybody before leaving to
18 gather documents related to Victoria Johnson,
19 to hold them, to save them because of this
20 litigation?

21 A I wasn't asked to personally hold or save
22 anything. I -- you know, my manager knew
23 where all my stuff was. Before I left, I
24 kind of oriented people to where stuff was in
25 my office.

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1 Q So if there were other letters that were
2 returned by the post office unclaimed or
3 undelivered -- certified mail letters, that
4 is, unclaimed or undelivered to Victoria,
5 they would have been in the same file that
6 the one letter that's the last two pages of
7 Exhibit 14 was kept in?

8 A Most likely. I don't remember.

9 Q You didn't segregate any of those out before
10 you left?

11 A I don't remember.

12 Q Tell me about the meeting, what happened at
13 the meeting with Victoria Johnson on
14 October 8, 2012.

15 A She -- when she came to work that morning --
16 I think it was a Monday morning -- she met
17 with myself and my director and we kind of
18 reviewed, you know, the expectations.

19 Because if she was going to come back to
20 work, we wanted to make sure she understood
21 and we were all on the same page.

22 Expectations of -- you know, she had
23 submitted a letter, if I remember, with some
24 demands or, you know, some -- you know, her
25 expectations of if she were to return, what

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1 she expected. So we met with her to kind of
2 talk about the expectations of her position.

3 Q Did you discuss with her what her
4 expectations were of the hospital?

5 A Rephrase that.

6 Q Well, you said that Victoria submitted a
7 letter --

8 A Yes.

9 Q -- of things that she wanted?

10 A Yeah.

11 Q Did you discuss with Victoria the things that
12 she wanted?

13 A Yeah. That was part of it.

14 - - - - -

15 (Plaintiff's Exhibit No. 15 was marked.)

16 - - - - -

17 Q Handing you what's marked as Exhibit 15.
18 Have you seen this document prior to today?

19 A Yeah.

20 Q What is it?

21 A This is a letter that Victoria sent in
22 response to our letter stating that she
23 needed to come back to work or we'd consider
24 that voluntary resignation.

25 Q You considered Exhibit 5 to be a voluntary

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1 resignation?

2 A No. I mean, basically saying, you know,
3 you're on an unpaid -- the expectation is
4 you're coming back to work or we'll have to
5 move to termination.

6 Q So as of October 1, was Victoria still
7 considered to be on the unpaid administrative
8 leave that she had been placed on on the 14th
9 of August?

10 A She was out just on an unpaid -- I don't know
11 if I would call it leave. She wasn't on
12 anything structured at that point. She was
13 just out.

14 Q Had you advised Victoria at any point between
15 August 14 and October 1 that her unpaid
16 administrative leave status had been
17 terminated, had been ended?

18 A That communication wouldn't come from me, so
19 I did not.

20 Q That communication would come from whom?

21 A Would have -- she -- the fit-for-duty that
22 was transitioned into the unpaid leave is --
23 that situation -- the communication --
24 when -- because that's her and her
25 relationship with that department. She would

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1 have been in communication with them. So
2 once that evaluation was over, she would have
3 been notified that her evaluation was
4 complete. But I don't send a notification
5 saying your fit-for-duty is complete.

6 Q So when that notification is sent by the
7 people who handle the EAP, are you copied on
8 that?

9 A I don't -- normally they'll keep me in the
10 loop, but I am not officially notified, no.
11 Like, I'm not copied on it. I don't know if
12 they verbalize it to her. I don't really
13 know their process.

14 Q Well, what do you mean when you say you're
15 kept in the loop?

16 A Well, they let me know whether somebody is
17 deemed fit-for-duty or not fit-for-duty.

18 Q Did they ever -- they being the EAP
19 department, right?

20 A Yeah.

21 Q Did they ever notify you that Victoria was
22 fit-for-duty?

23 A She was -- so because they ran concurrently,
24 when that evaluation ended, she was out on
25 FMLA, so she was never -- she was never

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1 deemed not fit-for-duty. Her evaluation was
2 completed, but she then switched to FMLA
3 because she was on FMLA.

4 Q Did the EAP department ever tell you that
5 Victoria was deemed fit-for-duty?

6 A I don't recall exactly. I'm sure they would
7 have. I just don't recall how.

8 Q If she was deemed fit-for-duty, you're sure
9 they would have told you; some way, shape, or
10 form, they would have told you?

11 A Yeah.

12 Q Do you recall being told in any way, shape,
13 or form --

14 A I do not recall.

15 Q -- that she was fit-for-duty?

16 A I recall that she switched -- she was on
17 FMLA. I do not recall -- so I recall the
18 evaluation being complete, but I don't recall
19 specifically how I was notified, if it was a
20 call or an e-mail. I'm sure if it was an
21 e-mail, you would have it.

22 Q So in response to the letter of October 1,
23 you received the letter from Victoria on
24 October 5, correct?

25 A Uh-huh.

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1 Q Yes?

2 A Yes.

3 Q And that's the letter we have marked as
4 Exhibit 15, correct?

5 A Yes.

6 Q And do you recall how Victoria provided this
7 to you? Was it mailed to you? Was it
8 dropped off at your office?

9 A I don't recall.

10 Q And Victoria requested in that letter --
11 well, let's go through all of the things that
12 she said that she expected.

13 She expected to work in a non-hostile
14 work environment.

15 Was there any problem with providing
16 her with a non-hostile work environment?

17 A Absolutely not.

18 Q She wanted a copy of the drug and alcohol
19 screening and the psychiatric report from
20 Dr. Pallas. Was she provided with those?

21 A I don't know. I don't have access to that.
22 I told her -- if I remember, I told her she
23 had to get that through them, not me. That I
24 don't know.

25 Q She asked not to complete the Medicare,

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1 Medicaid, out of state Medicaid or any other
2 provider enrollment applications that are
3 prohibited or in violation of their rules.

4 Any problem with that request?

5 A As long as we are complying with their rules,
6 she was fine.

7 Q Wanted to see a company-wide distributed
8 e-mail informing employees that they are no
9 longer permitted to rest at their desks
10 during their breaks.

11 Any problem giving her that?

12 A There's no -- it was not reasonable to ask to
13 do that.

14 Q I'm sorry?

15 A We weren't going to send a company-wide
16 e-mail. That's not reasonable.

17 Q Well, that had already been done on July 23
18 by Steve Riddle, correct?

19 A That's not company-wide. That was his
20 department. That wasn't even a hospital
21 policy. That was his department policy. His
22 department expectation.

23 Q But from what Victoria is indicating in this
24 particular item, number four, she wanted some
25 clarification on what she could or could not

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1 do regarding when she wanted to take a rest
2 or take a nap on her break, right?

3 A Right. And that's not a problem.

4 Q And that had been done and communicated by
5 Steve Riddle?

6 A Yes.

7 Q On July 23 he said, if you wanted to take a
8 nap during a break, there was a place you
9 could go do that?

10 A Right.

11 Q Didn't have any problem with that, correct?

12 A Yeah.

13 Q Number five, what did you and Victoria
14 discuss -- well, it wasn't just you and
15 Victoria. It was you and Angelique and
16 Victoria who met, correct?

17 A Correct.

18 Q Did you discuss with her the things that she
19 raised in number five regarding Mr. Simmons?

20 A We don't share with other employees, just as
21 I wouldn't share what happened with her, the
22 situation with Paul.

23 Q Is that what you told Victoria?

24 A Yeah.

25 Q What did she say?

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1 A I don't recall her response. It just is what
2 it is. It's private information.

3 Q I understand that. But my question is: What
4 was Victoria's reaction when you told her
5 that?

6 A I don't recall much of her -- I don't recall.

7 Q Did she indicate that she wouldn't return to
8 work if he wasn't given a psychiatric
9 evaluation and put on --

10 A No, I don't remember that she said that.

11 Q -- leave?

12 Did Victoria refuse to return to work?

13 A She refused -- no. And we wanted her -- we
14 were providing every opportunity to bring her
15 back to work. She still refused --

16 Q She didn't flat-out refuse to work?

17 A She was refusing to follow the directives of
18 the phone number. And as I mentioned
19 earlier, Sheryl even offered to let her use
20 her phone number, and she wouldn't even do
21 that. And Angelique asked her, are you
22 flat-out refusing to follow the directives
23 that we have support that we are doing the
24 right thing, and she said, I'm not going to
25 do it. We didn't want to terminate her.

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1 Q Did you provide Victoria with any
2 documentation at this meeting which would
3 show that the way her supervisors wanted her
4 to prepare the forms was not prohibited or
5 was not in violation of Medicare and
6 Medicaid -- I think it was Medicare we were
7 talking about here -- Medicare rules?

8 A We didn't have that with us, so no, we did
9 not. But that isn't -- if she wanted
10 something like that, we certainly could have
11 provided that for her.

12 Q She didn't say she would refuse to prepare
13 the documents; she said she would only refuse
14 to prepare them if it was not in compliance
15 with what the requirements were; is that
16 correct, the Medicare requirements were?

17 A So we specifically stated that in the phone
18 number section -- which is what she had the
19 focus on -- that the expectation is that she
20 would put her phone number there. And she
21 refused to do that.

22 Q And she believed that to be in violation of
23 the Medicare rules, correct?

24 A She still seemed to believe that that was in
25 violation.

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1 MR. HERRON: Okay. I think
2 I'm at a point where we're going to suspend
3 your deposition. It appears, from things
4 that you've said, that there are a lot more
5 documents that the hospital has been
6 withholding from me that are going to be
7 looked for. Right, Kerin? These supposed
8 FMLA documents.

9 MS. KAMINSKI: I would not
10 agree that we have been withholding them from
11 you, but I will agree that we are going to
12 look to see if there are other documents, and
13 if there are, we're going to produce them.

14 MR. HERRON: Okay. Well,
15 I'm not necessarily saying that you're
16 personally holding them, but if they exist,
17 clearly somebody is.

18 MS. KAMINSKI: Or we just
19 haven't located them yet. But this witness
20 wouldn't necessarily testify about the FMLA
21 documents. She's not in charge of FMLA.

22 MR. HERRON: Well, she's
23 also testified that she would have been --
24 her phrase on a couple of occasions was kept
25 in the loop --

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1 MS. KAMINSKI: Yeah, if

2 there's documents --

3 MR. HERRON: -- and these

4 things might have been forwarded to her.

5 MS. KAMINSKI: If there's
6 documents we find that this witness has
7 testimony to give about, we wouldn't object
8 to you asking her a couple more questions
9 about the documents we find. Not at all.

10 MR. HERRON: So we'll keep
11 this open.

12 MS. KAMINSKI: Just as to the
13 documents.

14 MR. HERRON: And anything
15 that it logically leads to.

16 MS. KAMINSKI: Right.

17 MR. HERRON: Okay. So I
18 don't know if you need to advise on signature
19 yet or not.

20 MS. KAMINSKI: We won't sign
21 it until it's completed.

22 (Deposition adjourned at 2:43 p.m.)

23

24

25

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1 THE STATE OF OHIO,) SS:

COUNTY OF CUYAHOGA.)

2

3 I, Gretchen E. Windenburg, a Notary Public
4 within and for the State of Ohio, duly
5 commissioned and qualified, do hereby certify
6 that CHRISTINA MORRISON, was first duly sworn to
7 testify the truth, the whole truth and nothing
8 but the truth in the cause aforesaid; that the
9 testimony then given by her was by me reduced to
10 stenotype in the presence of said witness,
11 afterwards transcribed on a computer/printer, and
12 that the foregoing is a true and correct
13 transcript of the testimony so given by her, as
14 aforesaid.

15 I do further certify that this deposition
16 was taken at the time and place in the foregoing
17 caption specified. I do further certify that I
18 am not a relative, counsel or attorney of either
19 party, or otherwise interested in the event of
20 this action.

21 IN WITNESS WHEREOF, I have hereunto set my
22 hand and affixed my seal of office at Cleveland,
23 Ohio, on this 17th day of July, 2014.

24

Gretchen E. Windenburg, Notary Public
within and for the State of Ohio
My Commission expires March 15, 2015.

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1 STATE OF _____)
2) SS:
3
4

5 Before me, a Notary Public in and for said
6 state and county, personally appeared the
7 above-named CHRISTINA MORRISON, who acknowledges
8 that she did sign the foregoing transcript and
9 that the same is a true and correct transcript of
10 the testimony so given.

11 IN TESTIMONY WHEREOF, I have hereunto
12 affixed my name and official seal at
13 _____ this _____ day of
14 _____, 2014.

15
16
17
18 _____
19
20
21 _____
22
23
24
25

CHRISTINA MORRISON

Notary Public

My Commission expires: _____

gew

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1 DEPOSITION ERRATA SHEET

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3 _____

4 Reason for change: _____

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22 Reason for change: _____

23 _____

SIGNATURE: _____ DATE: _____

24 CHRISTINA MORRISON

25

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1 DEPOSITION ERRATA SHEET

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22 Reason for change: _____

23 _____

SIGNATURE: _____ DATE: _____

24 CHRISTINA MORRISON

25

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Page 1

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